



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Fifteenth day of June Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.3326 of 2021
IN
CRL A(MD) No.205 of 2021

SAMIKANNU @ ANDISAMY

... PETITIONER/APPELLANT

Vs

STATE REP.BY,
THE INSPECTOR OF POLICE,
THUVARANKURICHI POLICE STATION,
TRICHY DISTRICT.
CR.NO. 213 OF 2013.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence and conviction made in the Judgment in SC.No.195 of 2014 on the file of the Learned Sessions Judge, Tiruchirappalli Division, Tiruchirappalli Dated.09.01.2019.

Order :This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.N.ANANDAKUMAR, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for Government on behalf of the Respondent, the Court made the following order:-

[Order of the Court was made by B.PUGALENDHI, J.]

The petitioner is the sole accused in S.C.No.195 of 2014 on the file of the learned Sessions Judge, Tiruchirappalli and he was found guilty for the offence under Section 302 IPC. The trial Court, having come to the conclusion that the charge against the accused has been proved, convicted the accused under Section 302 IPC and sentenced to undergo life imprisonment with a fine of Rs.1,000/-, in default, to undergo three years rigorous imprisonment. Challenging the conviction and sentence, the petitioner/accused has come up with this appeal. Pending appeal, he moved this petition



for suspension of sentence.

2. The case of the prosecution is that the petitioner and the defacto complainant are brothers and they are also sons of the deceased. The petitioner/accused had enmity with his father Vellaichamy that he did not take any step for his marriage. On 15.10.2013 at about 1.00 a.m., when the deceased was sleeping in the rope cot at the corridor situated near kitchen, the petitioner/accused had quarrelled with his father that he did not arrange marriage for him and assaulted him with an aruval on his head with an intention to murder him. The deceased sustained injuries near his right eye and died on the spot. Based on the complaint of the defacto complainant, a case was registered. After trial, the petitioner was found guilty and convicted for the offence under Section 302 IPC.

3. Mr.N.Anandakumar, learned counsel appearing for the petitioner, submitted that the trial Court found the petitioner guilty based on the evidence of P.W.1 and P.W.2, who are also inimical towards the petitioner on account of property dispute. Even according to the prosecution case, the occurrence took place at about 1.00 a.m., on 15.10.2013, but the complaint was lodged by P.W.1 on 16.10.2013 at about 8.15 a.m. Therefore, there was an inordinate delay of 8 hrs. in lodging the complaint. Further, the conduct of P.W.1 and P.W.2 in not preventing the accused while they were also present in the occurrence place at the time of incident, create a doubt on the case of the prosecution. Further, they did not raise any alarm and reported the incident only on the next day at 8.15 a.m., with the delay of 8 hrs.

4. The learned counsel for the petitioner has also referred to the evidence of P.W.9-Village Administrative Officer, who deposed that on 16.10.2013, he came to know about the occurrence and went to the place of occurrence around 7.00 a.m. at that time, the police were present and sniffer dogs were also available until 12.00 noon, however, there was no information about assailant. Per contra, P.W.1 and P.W.2 claim to be eye-witnesses and P.W.1 lodged the complaint as if he is an eye witness to the occurrence and the trial Court convicted the petitioner based on the evidence of P.Ws.1 and 2 which cannot be relied upon. The learned counsel for the petitioner submitted that the deceased suffered lacerated injury on his eye-brow, but, according to the doctor, the injury is not possible through the weapon (aruval) recovered from the accused. The Investigating Officer also admitted in his evidence that sniffer dogs were deployed in the process of investigation. Therefore, the prosecution has not proved its case beyond any reasonable doubt.

5. Mr.S.Ravi, learned Standing Counsel for Government appearing for the respondent Police submitted that this is a case of eye witness and P.W.1 and P.W.2, brother and sister of the deceased, deposed against the petitioner that the petitioner,



having enmity as against his father, has committed the offence. Therefore, this petition deserved to be dismissed.

6. This Court paid its anxious consideration to the rival submissions made.

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7. The petitioner is the son of the deceased. P.W.1 and P.W.2 are brother and sister of the petitioner and also son and daughter of the deceased. The complaint was lodged by P.W.1 on 16.10.2013 at about 8.15 a.m. According to the Village Administrative Officer (P.W.9), he was present in the place of occurrence at around 7.00 a.m., at that time, the police were also present. The evidence of P.W.9 (VAO) would further reveal that till 12.00 noon, the assailant was not known and sniffer dogs were also available in the place of occurrence. Therefore, there are some arguable points in favour of the petitioner/accused.

8. In view of the above, we are inclined to grant an order in favour of the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner is suspended, subject to the following conditions:

- i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Manapparai, Tiruchirappalli.
- ii. The petitioner shall report before the learned Judicial Magistrate, Manapparai, Tiruchirappalli, on the first working day of every English Calendar month at 10.30 a.m., until further orders.
- iii. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

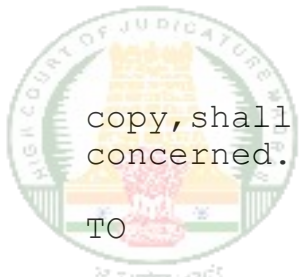
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, the copy of the order that is presented is the correct

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copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE SESSIONS JUDGE, TIRUCHIRAPPALLI.

2. THE JUDICIAL MAGISTRATE,
MANAPPARAI, TIRUCHIRAPPALLI.

3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUCHIRAPPALLI DISTRICT.

4. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY

5. THE INSPECTOR OF POLICE,
THUVARANKURICHI POLICE STATION,
TRICHY DISTRICT.

6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to Mr.N.ANANDAKUMAR, Advocate SR.No.3995

ORDER

IN

CRL MP (MD) No.3326 of 2021

IN

CRL A (MD) No.205 of 2021

Date :15/06/2021

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PK/VR/SAR-III/16.06.2021 : 4P/8C