



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

Thursday, the Twelfth day of August Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice J.NISHA BANU
CRL MP(MD) No.3339 of 2020
IN
CRL A(MD) No.204 of 2020

RAJA @ ASHOK KUMAR

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
CBCID, NAGERCOIL,
KANYAKUMARI DISTRICT.

... 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 imposed by the learned Principal Sessions Court, Tirunelveli in S.C.No.600 of 2017 dated 12.02.2020 and to enlarge the Appellant on bail pending disposal of the above said Criminal Appeal.

PRAYER IN CRL A(MD) No.204 OF 2020:

To call for the records and set aside the sentence and conviction imposed in S.C.No.600 of 2017 on the file of the learned Principal Sessions Court, Tirunelveli vide judgment dated 12.02.2020.

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.NIRANJAN S.KUMAR, Advocate for the petitioner and of Mr.S.RAVI, Standing counsel for state on behalf of the Respondent the Court made the following order:-

(Order of the Court was made by V.BHARATHIDASAN, J.)

Totally there are six accused. The petitioner is arrayed as A-4 in S.C.No.600 of 2017 on the file of the learned Principal Sessions Court, Tirunelveli. The trial Court, on appreciation of evidence, held that A-1, A-4 and A-5 are found guilty for the offence under Section 302 I.P.C and convicted them and sentenced to undergo Life Imprisonment and to pay a fine of Rs.10,000/- and in default to undergo one year Rigorous Imprisonment for the offence



under Section 302 I.P.C. Challenging the conviction and sentence, the present appeal has been filed by the petitioner/A-4. Pending appeal, he seeks suspension of sentence.

2.The case of the prosecution is that there was previous enmity between the deceased and A-1 to A-3 in conducting a temple festival and running a Polytechnic College. Due to the same, A-1, A-2 and A-3, along with the petitioner and other accused, said to have waylaid the deceased, who was travelling in a car and chased him. After seeing the accused, the deceased tried to escape and taken shelter in a hospital, where A-1 and A-5 and the petitioner, cut him with aruval indiscriminately causing 23 injuries, due to which, the deceased died on the spot. The trial Court after considering the materials available on record, convicted A-1, A-4 and A-5 for the offence under Section 302 I.P.C and sentenced them to undergo life imprisonment and acquitted A-2, A-3 and A-6.

3. Mr.Niranjan S.Kumar, learned counsel for the petitioner would contend that there are lot of contradictions between the evidence of eyewitnesses, and they are only chance witnesses, there were not at all present in the scene of occurrence. There was a delay in filing the F.I.R and also sending the report to the concerned Magistrate Court. The material contradiction clearly shows the falsity of the prosecution case. The trial Court without considering those contradictions has mechanically convicted the petitioner after acquitting the other accused A-2, A-3 and A-6 and hence, sought for suspension of sentence.

4. Mr.S.Ravi, learned Standing counsel appearing for the State opposing the bail application would submit that there was a previous enmity between the deceased and A-1 to A-3. The petitioner is only a hireling engaged by other accused and all the accused in a broad daylight chased the deceased, while he entered into a hospital to escape, the accused indiscriminately attacked him with dangerous weapons causing 23 injuries. Insofar as the petitioner is concerned, he has cut the deceased on his head twice with aruval and caused injuries all over the body. He would further submit that since one of the accused A-4, was a police personnel, earlier there was lethargic attitude in conducting the investigation by the investigating authority and hence, the investigation was transferred to CBCID and after conducting thorough investigation, they have filed the final report.

5. The learned Standing Counsel for the State would further state that insofar as the delay in filing the F.I.R and despatching the same to the concerned Magistrate Court is concerned, the delay has been properly explained and the delay in despatching the F.I.R to the Court is no way cause prejudice to the petitioner. After considering all those materials, the trial Court has rightly convicted the accused and hence, the petitioner is not entitled for



6. We have considered the rival submissions made and perused the materials available on records.

7. From the perusal of the materials, it is seen that there was a motive between A-1 to A-3 and the deceased. The petitioner is only a hireling and he was engaged by other accused. The occurrence had taken place in a broad daylight inside the hospital where the deceased taken shelter. There are eyewitnesses, who had seen the petitioner attacked the deceased with aruval on his head twice and caused injuries all over the body. Whether the delay in registering the F.I.R or sending the same to the concerned Magistrate Court, caused any prejudice to the accused can be decided only in the appeal and it cannot be decided at this stage.

8. Considering the fact that it is a gruesome murder took place in a broad daylight and considering the gravity of offence, we are not inclined to suspend the sentence. Hence, this Criminal Miscellaneous Petition is dismissed.

sd/-
12/08/2021

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/ /2021
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, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

- 1 THE PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE
CBCID, NAGERCOIL, KANYAKUMARI DT
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.3339 of 2020
IN
CRL A(MD) No.204 of 2020
Date : 12/08/2021

SS/PN/SAR-III/19.08.2021 : 3P/5C