



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

Tuesday, the Nineteenth day of January Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.3997 of 2020
IN
CRL A(MD) No.223 of 2019

NAGARAJAN

... APPELLANT/ ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
NAGAMALAI PUDUKOTTAI,
MADURAI DISTRICT.
CRIME NO.403/2013

... 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 imposed on the appellant by its judgment dated 23.04.2019 made in S.C.NO.44 of 2016 on the file of the Learned Principal District and Sessions Judge, Madurai, Pending disposal of the above Criminal appeal.

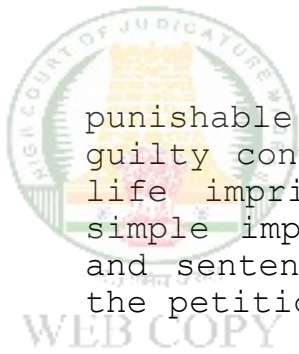
PRAYER IN CRL A(MD) No.223 of 2019:

To admit this appeal on file, to call for the records from the lower court(learned Principal District and Sessions Judge, Madurai) and to set aside the judgment of the Lower Court by acquitting the Appellant in S.C.No.44 of 2016 dated 23.04.2019 on the file of the Learned Principal District and Sessions Judge, Madurai.

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.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by **K.KALYANASUNDARAM, J.**]

The sole accused in S.C.No.44 of 2016 on the file of the Principal Sessions Judge, Madurai was charged for the offence
<https://hcservices.ecourts.gov.in/hcservices/>



punishable under Section 302 IPC. The trial Judge having found him guilty convicted for the said charges and sentenced him to undergo life imprisonment with fine of Rs.1000/- in default to undergo simple imprisonment for three months. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, the petitioner seeks for suspension of sentence.

2.The case of the prosecution is that the deceased and the accused are neighbours and they are native of Nagamalai Pudukkottai. It is the case of the prosecution that the deceased owned goat shed which has been used by the accused to consume liquor. The act of the accused was opposed by the deceased. In this regard, there was previous enmity between them. The further case of the prosecution is that on 31.10.2013 at about 11.30 a.m when the deceased Muthu @ Thuppakikarar Muthu was standing near his goat shed, the accused came to there and attacked him with M.O.1 stick on the vital parts of the deceased and thereby he caused his death.

3.A perusal of the materials available on records show that the prosecution examined P.W.1 to P.W.4 as eyewitnesses to the incident. Mainly relying on their evidence, the Trial Court also came to the conclusion that the prosecution has proved the charge against him beyond reasonable doubt and convicted and sentenced him as stated supra.

4.Mr.Karuppasamy Pandian, learned counsel for the petitioner would argue that the evidence of P.W.4 would show that P.W.1 and P.W.2 were not present in the scene of occurrence at the time of occurrence and P.Ws.1 and 2 have not spoken about the presence of P.W.4 in the scene of occurrence at that relevant time. According to the learned counsel, there are vital contradictions in the evidence of P.W.1, P.W.2 and P.W.4 which goes to the root of the matter. It is also contended that as per prosecution case, the accused was arrested on the same day i.e., 31.10.2013 at 04.00 p.m and in pursuance of his confession, M.O.1 stick was recovered from Periya Muthiah Kovil Street, but P.W.1 says that the accused left the stick at the scene of occurrence and took to his heels. But P.W.2 says that the accused was secured by the public within ½ hour in the scene of occurrence itself.

5.It is next argued by the learned counsel for the petitioner that as per prosecution, the complaint for the occurrence which took place at 11.30 a.m on 31.10.2013 was preferred to the police at 12.30 pm. However, P.W.4 would say that the police were present in the scene of occurrence at 11.30 a.m, which creates serious doubts over the case of the prosecution. He further added that the accused has been incarceration for about 1-1/2 years and he is having two daughters and he is the only breadwinner of the family.



6.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing on behalf of the State vehemently opposed this application contending that earlier two applications were dismissed. According to the learned Additional Public Prosecutor, P.W.1 and P.W.2 are natural witnesses. Even though they are interested in this case, but, nothing was brought on record to show that they falsely implicated the accused in this case. It is also argued that P.W.4 is an independent witness and he has supported the case of the prosecution and hence, this application has to be dismissed.

7.In the matter on hand, it is the case of the prosecution that consequent to the previous enmity between the accused and the deceased, on 31.10.2013 at 11.30 a.m, the accused is said to have attacked the deceased with M.O.1 stick. As rightly pointed out by the learned counsel for the petitioner, P.W.4 in his evidence, has not stated about the presence of P.W.1 and P.W.2 in the scene of occurrence at the time of occurrence. A perusal of the evidence of P.W.1, P.W.2 and P.W.4 would reveal that there are contradictions with regard to the arrest of the accused and recovery of the weapon M.O.1. Though the first application was dismissed on merits by this Court on 03.06.2019, thereafter, the appeal could not be taken up for final disposal.

8.In the light of the above fact, we are of the opinion that the petitioner is entitled for suspension of sentence during pendency of the appeal. 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, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the Judicial Magistrate No.6, Madurai.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the committal Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioner shall appear before the learned Judicial Magistrate No.6, Madurai, at 10.30 a.m. on every Monday until further orders.

iv. 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 committal Court on any other day, as determined by the committal Court, in lieu of the day on which they would absent.

sd/-
19/01/2021

WEB COPY

/ TRUE COPY /

/ /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 DISTRICT AND SESSIONS JUDGE,
MADURAI.
 - 2 THE JUDICIAL MAGISTRATE NO.6, MADURAI.
 - 3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
 - 4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
 - 5 THE INSPECTOR OF POLICE,
NAGAMALAI PUDUKKOTTAI POLICE STATION,
NAGAMALAI PUDUKOTTAI, MADURAI DISTRICT.
 - 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.A.JOSEPH JERRY, Advocate (SR-280[I] dated 19/01/2021)

ORDER
IN
CRL MP(MD) No.3997 of 2020
IN
CRL A(MD) No.223 of 2019
Date :19/01/2021

SKN
MS/VR/SAR-3/29.01.2021/4P.8C