



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Monday, the Twenty Second day of March Two Thousand and Twenty One

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM

and

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.4047 of 2020

IN

CRL A(MD) No.263 of 2020

SHANMUGARAJ

... APPELLANT/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
TUTICORIN NORTH POLICE STATION,
TUTICORIN DISTRICT.
CRIME NO.150 OF 2015

... RESPONDENT/RESPONDENT/
COMPLAINANT

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 in judgment dated 04.12.2019 made in S.C.No.461 of 2015 on the file of the I Additional District and Sessions Court, Tuticorin and enlarge the petitioner on bail pending disposal above Criminal Appeal.

PRAYER IN CRL A(MD) No.263 of 2020:

Pleased to set aside the Judgment dated 04.12.2019 made in S.C.No.461 of 2015 on the file of the I Additional District and Sessions Court, Tuticorin.

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.C.MAYILVAHANA RAJENDRAN, Advocate for the petitioner and of Mr.R.ANANDARAJ, 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.461 of 2015 was tried by the I Additional District and Sessions Court, Tuticorin for the charges under Sections 294(b), 449, 302 and 506(ii) of IPC. After trial, he



was found guilty under Section 449 and 302 of IPC, for which, he was sentenced to undergo 7 years Rigorous Imprisonment with fine of Rs.5,000/- and life imprisonment, respectively and he was acquitted for the charges under Sections 294(b) and 506(ii) of IPC. Challenging the said conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2. The case of the prosecution is that the deceased Murugan is the brother-in-law of the accused. The accused married the sister of the deceased Boopathy about four years prior to the occurrence. However, due to dispute, they were living separately. It is the further case that often the accused went to his in-law's house to bring back his wife, but it was objected by the deceased. On the date of occurrence also i.e., on 20.03.2015 at about 2.45 p.m., the accused went to the house of the deceased to take his wife, but the deceased informed that she was not available. Enraged over the answer from the deceased, he assaulted her with aruval and caused his death.

3. The prosecution in order to prove the guilt against the accused, examined P.W.1 to P.W.4 as eye witnesses to the incident. They have categorically spoken about the manner of incident in their evidence. The other witnesses also corroborated the evidence of prosecution and hence, the Trial Court convicted and sentenced him as stated supra.

4. Mr.C.Mayil Vahana Rajendran, learned counsel appearing for the petitioner would argue that all the eye witnesses P.Ws.1 to 4 are close relatives of the deceased and they have motive to depose against the accused. The non-examination of the independent witness by the prosecution creates a reasonable doubt over the presence of P.Ws.1 to 4 in the scene of occurrence at the relevant point of time. It is also contended that even the story of the prosecution is that the accused wanted to live with his wife, which was being objected by the prosecution and hence, at the most, it would be the case of sustained provocation, hence his conviction under Section 302 of IPC is to be set aside. That apart there are material contradictions in the evidence of the eye witnesses.

5. Per contra, the learned Additional Public Prosecutor would argue that the deceased is none other than the brother-in-law of the accused and he is having strong motive to eliminate the deceased. Motive and the overt act has been clearly stated by the eye witness and there is no reason to disbelieve them. Hence, the accused is not entitled for suspension of sentence.

6. Heard Mr.C.Mayil Vahana Rajendran, learned counsel appearing for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.



7. In the case on hand, it is not in dispute that the accused is the brother-in-law of the deceased and he married the deceased's sister about 4 years prior to the occurrence. P.Ws.1 to 4 have stated that in view of the matrimonial dispute, they were living separately, but the accused used to come to the in-law's house to take back his wife. It is also stated that prior to the occurrence, the accused had stated to the deceased that unless his wife is sent with him, he has to face the consequences. The evidence of P.Ws.1 to 4 shows that the accused wanted to live with his wife, which is being objected by the deceased. It is further stated that the accused has no strong motive to assault the deceased and it had happened due to sudden provocation. It is relevant to note that the petitioner has been in judicial custody for the past 1 ½ years and the appeal is not likely to be taken up for final disposal in near future.

8. In the light of the above facts, 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 No.II, Thoothukudi.

ii. The petitioner shall report before the learned Judicial Magistrate No.II, Thoothukudi, once in a week I.e., on the first working day of every Monday 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.

sd/-
22/03/2021

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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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TUTICORIN.

2. THE JUDICIAL MAGISTRATE No.II, THOOTHUKUDI.

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

4. THE INSPECTOR OF POLICE
TUTICORIN NORTH POLICE STATION,
TUTICORIN DISTRICT.

5. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

+1. C.C. to Mr.C.MAYILVAHANA RAJENDRAN Advocate SR.No.2484

ORDER

IN

CRL MP(MD) No.4047 of 2020

IN

CRL A(MD) No.263 of 2020

Date :22/03/2021

AM

TK/VR/SAR.1/01.04.2021/4P/8C