



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

Wednesday, the Fourteenth day of July 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.4321 of 2021**  
**in**  
**CRL.A. (MD) No.378 of 2020**

GUNASEKARAN

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY  
THE INSPECTOR OF POLICE,  
SIVAKASI EAST POLICE STATION,  
VIRUDHUNAGAR DISTRICT.  
CR NO.674/2008

... 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 Principal District and Sessions Court, Virudhunagar District, Srivilliputtur in S.C.No.43/2010 on 10.02.2020 and release the petitioner on bail pending disposal of the Criminal Appeal.

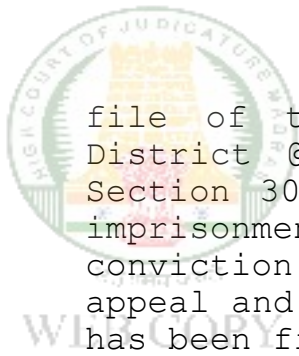
**Prayer in CRL A(MD). 378/ 2020 :**

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to call for records and set aside the conviction and sentence imposed by the Principal District and Sessions Court, Virudhunagar District, Srivilliputhur in S.C.No.43/2010 on 10.02.2020 and allow this Criminal Appeal.

**Order :** This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.JOTHI BASU, Advocate for the petitioner and of Mr.S.RAVI, Standing counsel for the State, 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.43 of 2010 on the  
<https://hcservices.ecourts.gov.in/hcservices/>



file of the Principal District and Sessions Court Virudhunagar District @ Srivilliputtur. He was tried for the offence under Section 302 IPC, found guilty, convicted and sentenced to undergo imprisonment for life, by judgment dated 10.02.2020. As against the conviction and sentence, the petitioner has preferred the present appeal and pending this appeal this petition to suspend the sentence has been filed.

2.The case of the prosecution is that the deceased and the accused are friends and the deceased is said to have parted some money with the accused. Since the accused did not repay the said money, the deceased scolded him in abusive words and there was a wordy quarrel between them on the date of occurrence. PW1 is said to have pacified them. At that time the accused cut the deceased with knife.

3.The learned Counsel for the petitioner submits that the prosecution has cited six persons as eye witnesses to the occurrence. Except PW1 none of the witnesses has supported the case of the prosecution. PW6 to PW9 turned hostile. PW2 and PW3 admitted that they did not witness the occurrence and there are contradictions among the witnesses PW1 to PW3. He would further submit that since PW1 the mother of the deceased being interested witness, her testimony cannot be considered fully. There are contradictions between her evidence and other witnesses. The learned Counsel for the petitioner relied on the evidence of PW5, the father of the deceased and would submit that the presence of PW1 has not been stated by PW5 the father of the deceased and therefore, the presence of PW1 in the scene of occurrence is doubtful. It is the case of the prosecution that PW11 took the deceased along with PW8 to the hospital. But PW8 did not support the case of the prosecution. According to the learned Counsel for the petitioner, two different 161(3) CrPC statements were recorded from PW1 Gomathi Ammal and now in the further statement she has improved the case of the prosecution and she is not a reliable witness. While so, the trial Court has convicted the petitioner based on the evidence of PW1.

4.Per contra, the learned Standing Counsel for the State would submit that this is a case of eye witness and PW1 has stated about the occurrence and the complaint was also lodged immediately after the occurrence and there is no delay in reporting the incident and the prosecution has sufficiently established the guilt as against the accused / this petitioner and there is no reason to interfere with the same.

5.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

6.Admittedly, the petitioner and the deceased were close friends and used to consume liquor together. Even on the date of occurrence, the petitioner and the deceased were together.



of occurrence, they were consuming alcohol together in the place of occurrence and at that time since the deceased used certain abusive words against the accused, he got frustrated and suddenly attacked the deceased with a knife and the Doctor has noted one injury.

7. Even according to the prosecution, the occurrence has taken place due to a sudden quarrel, where the deceased had abused the accused with filthy words and the accused had caused injury. Therefore, the case of the accused would squarely fall within the exception to Section 300 IPC. As pointed out by the learned Counsel for the petitioner, except PW1, no other eye witness has supported the case of the prosecution and there are certain contradiction between the version of the PW1 and other witnesses.

8. Considering the facts and circumstances of the case and that since the petitioner has made certain arguable points in his favour, this Court is inclined to suspend the substantive sentence of imprisonment imposed on the petitioner, 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 learned Principal District and Sessions Court, Virudhunagar District @ Srivilliputtur.

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

iii. The petitioner shall report before the learned Principal District and Sessions Judge, Virudhunagar District @ Srivilliputtur at 10.30 a.m. on the first working day of every month, until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to her to file application under Section 317 Cr.P.C. and appear before the trial Court on any other day, as determined by the trial Court, in lieu of the day on which he would absent.

9. In fine, this criminal miscellaneous petition stands allowed.

sd/-

14/07/2021

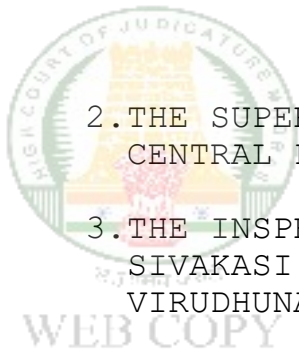
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/ /2021

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

TO

1. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,  
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR.



2.THE SUPERINTENDENT,  
CENTRAL PRISON, MADURAI.

3.THE INSPECTOR OF POLICE,  
SIVAKASI EAST POLICE STATION,  
VIRUDHUNAGAR DISTRICT.

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

+1 CC to M/s.G.M.LAW OFFICE, Advocate ( SR-4545[I]dated 14/07/2021 )

ORDER

IN

CRL MP(MD) No.4321 of 2021  
in

CRL.A.(MD) No.378 of 2020

Date :14/07/2021

DSK

SS/JC/SAR-III/26.07.2021 : 4P/6C