



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

Tuesday, the Tenth 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.M.P. (MD) .No.4364 of 2021 in
Crl.A. (MD) .No.560 of 2019

KANAGARAJ

... PETITIONER/2nd APPELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
KRISHNAN KOVIL POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME No.29/2011).

... 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 at Srivilliputhur on 02/11/2019 in S.C.No.196/2011 and release the petitioner on bail pending disposal of the Criminal Appeal.

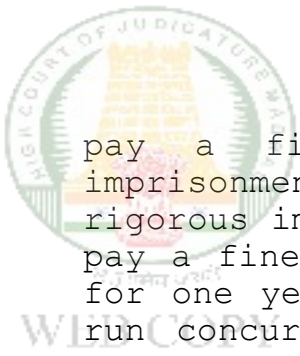
Prayer in CRL A(MD) No. 560/ 2019 :

To set aside the conviction and sentence imposed by the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur in S.C.No.196 of 2011 on 02.11.2019 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 Mr.M.JOTHI BASU, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel on behalf of the Respondent, the court made the following order:-

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

Totally there are two accused in S.C.No.196 of 2011, on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur. The petitioner is the second accused and he was found guilty for the offence under Sections 302 r/w 34, and 307(2 counts) of IPC. The trial Court sentenced him to undergo life imprisonment for the offence under Section 302 r/w 34 IPC., and to



pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year, further sentenced him to undergo 7 years rigorous imprisonment for the offence under Section 307 IPC., and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for one year, for each counts. The sentences were ordered to be run concurrently. Challenging the 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 and the accused are neighbouring land owners and there was a civil dispute with regard to taking water in a common well. On 13.03.2011 at 6.30 p.m., while the deceased and the injured witnesses namely P.W.3 irrigating the land by taking water from the common well, there was a wordy quarrel between the accused and the deceased family, in which A1 in this case attacked the deceased with knife and caused his death, while P.W.3 and P.W.5 wife and daughter of the deceased came to prevent the petitioner/A2, he attacked them with knife and caused injury. The trial Court, on appreciation of evidence, found him guilty and convicted and sentenced him as stated above.

3.The learned counsel for the petitioner would submit that the occurrence was taken place in a wordy quarrel in respect of taking water from the common well. During the wordy quarrel between the accused and the deceased, out of sudden provocation, A1 alone attacked the deceased and caused his death and so far as the petitioner is concerned, he said to have attacked P.W.3 and P.W.5 and caused minor injuries and the petitioner has been convicted under Section 302 IPC., with the aid of 34 IPC. From the evidence it is clear that it is not a premeditated murder. The petitioner is in jail for the past 18 months.

4.Mr.S.Ravi, learned Standing counsel appearing for the State strongly opposing the bail application would submit that there are two injured witnesses namely P.Ws.3 and 5 and with regard to in a dispute over taking water in a common well, the occurrence had taken place, in which, A1 attacked the deceased with knife and caused death and the petitioner attacked P.W.3 and P.W.5 with knife and caused fracture. Hence, the petitioner has been convicted under Sections 302 r/w 34 and 307 IPC. The trial Court believing the evidence of the eye witnesses, convicted the petitioner/accused and he is not entitled for bail.

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

6.From the perusal of the records, it is seen that there was a civil dispute between the parties regarding taking water from the common well and on the date of occurrence, there was a wordy quarrel in which, due to sudden provocation, A1 attacked the deceased with



knife and caused his death. So far as this petitioner is concerned, he attacked P.W.3 and P.W.5, who are wife and daughter of the deceased, with knife and caused serious injuries.

7.Considering the fact that the occurrence had taken place in a wordy quarrel, and in sudden provocation only, the first accused attacked the deceased and caused his death, insofar as this petitioner is concerned, he attacked the injured witnesses and caused injuries, we find a *prima facie* case has been made out for grant of suspension of sentence.

8.Considering the above aspects, we are inclined to grant suspension of sentence. Accordingly, the Criminal Miscellaneous Petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

i.The petitioner is directed to be enlarged on bail on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like-sum to the satisfaction of the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur.

ii.The petitioner shall appear before the trial Court at 10.30 a.m., on the first working day of every English calendar month 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 of Cr.P.C. and appear before the Court concerned on any other day, as determined by the Court concerned, in lieu of the day on which he would absent.

sd/-
10/08/2021

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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 DISTRICT AND SESSIONS JUDGE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE INSPECTOR OF POLICE,
KRISHNAN KOVIL POLICE STATION,
VIRUDHUNAGAR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to Mr.M.JOTHI BASU, Advocate (SR-5250[I] dated 10/08/2021)

ORDER

IN

CRL MP (MD) No.4364 of 2021
in

Crl.A. (MD) .No.560 of 2019

Date :10/08/2021

mpk

USK/VR/SAR-I : 11/08/2021 : 4P/6C