



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

Monday, the Sixteenth day of August Two Thousand and Twenty One
PRESENT

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The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice J.NISHA BANU

Crl.M.P. (MD) .No.4618 of 2021
in
Crl.A. (MD) .No.254 of 2020

R.SENTHILKUMAR

... PETITIONER/1ST APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
THIRUPPACHETHI POLICE STATION,
SIVAGANGAI DISTRICT.
(CRIME.NO.235/2011)

... 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 of Imprisonment imposed by the learned Principal District and Sessions Judge, Sivagangai made in S.C.No.85 of 2014 by the Judgment dated 31/01/2020 and enlarge the petitioner / Appellant on bail, pending disposal of the above Criminal Appeal.

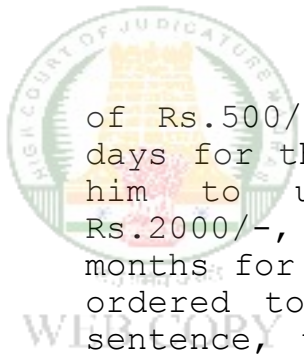
PRAYER IN CRL A(MD)No.254 of 2020:

To call for the records and set aside the order of conviction and sentence passed in S.C.No.85 of 2014 dated 31.01.2020 on the file of the District and Principal Sessions Judge, Sivagangai and allow this appeal and acquit the appellant/accused.

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.P.ANDIRAJ, 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.85 of 2014, on the file of the Principal District and Sessions Court, Sivagangai. The petitioner is the first accused and he was found guilty for the offence under Sections 341 & 302 of IPC. The trial Court sentenced him to undergo simple imprisonment for one month and to pay a fine



of Rs.500/-, in default, to undergo Rigorous Imprisonment for 15 days for the offence under Section 341 I.P.C, and further sentenced him to undergo life imprisonment and to pay a fine of Rs.2000/-, in default, to undergo Rigorous Imprisonment for three months for the offence under Section 302 I.P.C. The sentences were ordered to be run concurrently. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, the petitioner/A-1 seeks suspension of sentence.

2. The case of the prosecution is that, the deceased and A-2 are brothers and there was a dispute between them regarding partition of a property. With that motive, on 20.09.2011 at about 6.15 p.m., while the deceased, P.W.1 and P.W.2, came from Sugarcane field, A-1 and A-2 waylaid them and A-2 asked A-1 to attack the deceased and at his instigation, the A-1 cut the deceased with bill-hook in the neck and caused his death. Immediately, P.W.1 and P.W.2, who were present in the scene of occurrence, went to the respondent police station and lodged the complaint at about 6.45 p.m., and an F.I.R was registered in Crime No.235 of 2011. After investigation, final report was filed. The trial Court after full-fledged trial, considering the materials available on record, convicted both the accused and sentenced them as stated earlier. Challenging the same, the present appeal has been filed. This application is filed by the petitioner/A-1 seeking suspension of sentence.

3. The learned counsel for the petitioner would submit that P.Ws.1 and 2 are the son and son-in-law of the deceased and they are interested witnesses. From the perusal of their evidence, it is doubted whether they were present in the scene of occurrence. That apart, the occurrence is said to have taken place due to a wordy quarrel between the brothers regarding partition of property. Out of sudden provocation, the occurrence is said to have taken place, in which, the petitioner attacked him and caused a single injury. Except the interested witnesses P.Ws.1 and 2, there is no other evidence available on record to connect the petitioner with the crime. The trial Court without considering the same, convicted the accused.

4. Mr.S.Ravi, learned Standing counsel appearing for the State strongly opposing the bail application would submit that the occurrence had taken place near a sugarcane field. When the deceased and P.W.1 and 2, coming back from the field, due to some property dispute, both the accused waylaid the deceased and A-1 cut the deceased with bill-hook in the neck, where he died on the spot. Immediately, F.I.R has been registered and there is no delay in filing the F.I.R as alleged by the learned counsel for the petitioner. In the F.I.R., both the accused were named. The evidence of P.W.1 and P.W.2 is highly reliable and trustworthy and believing the evidence of P.W.1 and P.W.2, the trial Court convicted



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 the deceased is the brother of A-2. Admittedly, there was a civil dispute between them regarding partition of property. P.W.1 and P.W.2 are the son and son-in-law of the deceased and there was a wordy quarrel between the accused and the deceased, in which, the petitioner/A1 is said to have attacked the deceased and caused injury in the neck. Except P.W.1 and P.W.2, there is no independent witness available in this case to support the case of the prosecution.

7. Considering the circumstances that the occurrence had taken place in a wordy quarrel between the brothers regarding property dispute and due to sudden provocation, the petitioner caused a single injury, which was fatal, 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 Judge, Sivagangai.

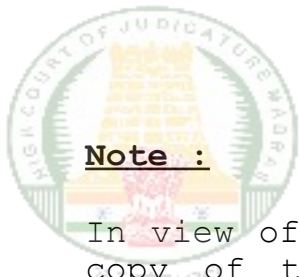
ii. The petitioner shall appear before the trial Court at 10.30 a.m., on the first working day of every English calendar month until further orders.

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/-
16/08/2021

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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,
SIVAGANGAI.
- 2.THE ADDITIONAL DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, MANAMADURAI.
- 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.
- 4.THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 5.THE INSPECTOR OF POLICE
THIRUPPACHETHI POLICE STATION,
SIVAGANGAI DISTRICT.
- 6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

Crl.M.P. (MD) .No.4618 of 2021
in

Crl.A. (MD) .No.254 of 2020

Date :16/08/2021

SA/VR/SAR.4/16.08.2021/4P/7C