



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

Monday, the Twenty Fifth 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.4578 of 2020
IN
CRL A(MD) No.508 of 2019

DHAYA @ DHAYANITHI

... PETITIONER/APELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ORATHANADU POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.30 OF 2003)

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed upon the petitioner in S.C.No.264/2016 on the file of the III Additional District and Sessions Judge, Pattukottai, Thanjavur District dated 22.08.2019, pending disposal of the main Criminal Appeal.

Prayer in CRL A(MD) No.508 of 2019:

To call for the records in S.C.No.264 of 2016 on the file of the Learned III Additional District and Sessions Judge, Pattukottai, Thanjavur District and SET ASIDE the Judgment dated 22.08.2019 and Acquit the Appellant of the Charges leveled against the petitioner.

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.A.SELVENDRAN, 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 Judgment and order of the III Additional District and Sessions Judge, Pattukkottai convicting the accused for the commission of offence of murder and sentenced him to undergo life imprisonment with a fine of Rs.25,000/- passed in S.C.No.264/2016 is assailed in this appeal. Pending appeal, he seeks suspension of sentence.



2.The case of the prosecution is that on 17.01.2003 at 05.00 p.m, a panchayat was held with regard to the construction of Santhiyamman Temple. During discussions, an altercation arose between the accused party and one Kaliyaperumal, who is the father-in-law of the deceased Dinesh. It is the further case of the prosecution that one of the accused pushed the said Kaliyaperumal, which was questioned by his son-in-law, the deceased Dinesh. At that time, the petitioner is said to have assaulted the deceased with M.O.6 Iron rod and thereby, he caused his death.

3.Mr.A.Selvendran, learned counsel for the petitioner would argue that originally, there are totally 4 accused in this case and in respect of 3 accused, who faced trial in S.C.No.2/2008, the learned Sessions Judge, vide Judgment dated 21.11.2011, acquitted all the three for the charge of murder and the order of acquittal has not been challenged by the respondent so far. He would further add that the prosecution examined P.W.1 to P.W.4 as eyewitnesses to the occurrence. With regard to P.W.1, the investigating officer (P.W.14) would say that P.W.1 did not see the occurrence. P.W.2 is said to have taken the deceased to the hospital and P.W.13 is the Doctor, who treated the deceased. P.W.2 informed P.W.13 that the deceased was attacked by two unknown persons and Ex.P.7 is the Accident Register. It is further submitted that P.W.3 and P.W.4 the mother and uncle of the deceased, have given a different version with regard to the use of the iron rod and the place of occurrence. As per the prosecution, the occurrence had taken place near Santhiamman Temple, but P.W.3 says that the occurrence had taken place in the road. P.W.4 is said to have accompanied P.W.2 at the time of lodging of the complaint. It is the submission of the learned counsel for the petitioner that all the four witnesses are interested witnesses and no independent witness was examined to prove the charge against the accused. After considering the same set of evidence, the learned Sessions Judge found them untrustworthy and acquitted the three accused. He further added that the complaint was lodged after consultation and discussion and hence, no importance could not be attached to the First Information Report.

4.Per contra, the learned Additional Public Prosecutor Mr.R.Anandharaj would submit that the petitioner was absconding for about 7 years and hence, the case was split up. The testimony of eyewitnesses would show that the petitioner attacked the deceased with iron rod and the other three accused have caught-hold of the deceased. It is the submission of the learned Additional Public Prosecutor that the petitioner is the main accused and acquittal of the other accused would no way help the Petitioner. It is also submitted that P.W.5 is the independent witness and he has supported the case of the prosecution and prayed for dismissal of the petition.



5. In the case on hand, it is not disputed that a criminal case was registered against four accused and in respect of three accused, the learned Sessions Judge acquitted them in S.C.No.2 of 2008 vide Judgement, dated 20.01.2011. It is also stated that the order of acquittal is not challenged till date either by the State or by the victim. Perusal of eyewitnesses and the evidence of P.W.13 and P.W.14 would indicate that there are discrepancies in their evidence.

6. Considering above aspects, 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 each of them 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 District Munsif and Judicial Magistrate, Orathanadu.

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

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

iv. On any particular date, if the petitioners are not able to appear, leave is granted to the petitioners 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/-
25/01/2021

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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



TO

1 THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PATTUKKOTTAI, THANJAVUR DISTRICT.

2 THE DISTRICT MUNSIF AND JUDICIAL MAGISTRATE,
ORATHANADU.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.

4 THE INSPECTOR OF POLICE,
ORATHANADU POLICE STATION,
THANJAVUR DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPPALLI.

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

ORDER

IN

CRL MP (MD) No.4578 of 2020

IN

CRL A (MD) No.508 of 2019

Date :25/01/2021

skn

JM/VR/SAR II/01.02.2021/4P/7C