



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

Wednesday, the Thirtieth day of June Two Thousand and Twenty One

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.4901 of 2020

IN

CRL A(MD) No.301 of 2020

1 SYED @ SYED ABDHAHIR

2 RAFFEK @ KALANDHAR RAFEK

... PETITIONERS/APPELLANTS

Vs

THE STATE OF TAMIL NADU
THE INSPECTOR OF POLICE
S.P.PATTINAM POLICE STATION,
RAMANTHAPURAM DISTRICT.
CR.NO.70 OF 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 learned Additional District and Sessions Court, Ramanathapuram vide Judgment dated 30.07.2020 made in S.C.No.49 of 2012, in so far as the petitioners are concerned, pending disposal of the above Criminal Appeal.

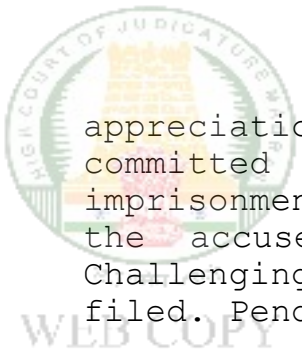
PRAYER IN CRL A(MD) No.301 of 2020:

To set aside the conviction and sentence dated 30.07.2020 passed in S.C.No.49/2012 on the file of the learned Additional District and Sessions Court, Ramanathapuram.

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.RAVICHANDRA RAMAVANNI, Advocate for the Appellants and of MR.S.RAVI, Standing Counsel for the State for the Respondent the court made the following order:-

(Order of the Court was made by **K.KALYANASUNDARAM. , J**)

The petitioners herein were arrayed as Accused Nos.2 and 3 in Sessions Case No.49 of 2012, on the file of the Additional District Court, Ramanathapuram. They were tried along with four other accused for causing murder of one Mohamed Yousuf. The trial Court, on



appreciation of evidence, held that the Accused Nos.2 and 3 have committed the offence and sentenced them to undergo life imprisonment. The first accused Nagoor Gani died pending trial and the accused Nos.4 to 6 were acquitted by the trial Court. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal they seek suspension of sentence.

2. It is the story of the prosecution that both the accused party and the deceased party are resident of S.P.Pattinam Village in Ramnad District. The motive alleged by the prosecution is that the accused have encroached upon the property of the deceased. In this regard, there was prior enmity exist between them. While so, on 04.09.2011, at 9.00 p.m., when the deceased was returning from Ramanathapuram to his village S.P.Pattinam, he got down from the bus and travelling in a two wheeler along with P.W.3. At that time, the accused way laid the deceased and after the deceased fell down from the motorcycle, A1 attacked the deceased with knife. The deceased ran into the house of P.W.4, the accused 1 to 3 chased and assaulted him with weapons and thereby caused his death.

3. To prove the charges against the accused, the prosecution in total examined 25 witnesses, marked 42 documents and 12 material objects. P.Ws.1 to 4 were projected as eyewitnesses to the incident. P.W.1 is the father of the deceased. P.W.2 is the relative of P.W.1. P.Ws.3 and 4 did not support the case of the prosecution. As mentioned above, the petitioners were convicted and sentenced to undergo life imprisonment.

4. The learned counsel appearing for the petitioner Mr.M.Jeyakarthik, would submit that the presence of P.W.1 in the scene of occurrence is highly doubtful. Further, P.W.2 has not stated about the overt act attributed against the accused and he is not supporting the case of the prosecution. It is further contended that for the occurrence which had taken place at 9.30 p.m., on 04.09.2011, a complaint was lodged at 11.00 p.m., on the same day. However, the printed F.I.R. reached the Court only on the next day at 10.15 a.m. It is the submission of the learned counsel for the petitioner that the delay of 12 hours remained unexplained by the prosecution. He further added that the evidence of P.W.8 would show that P.W.1 was not at all present at the scene of occurrence, as he has specifically stated that after the incident, the deceased was alive and he took the deceased to the hospital. It is further stated that there are contradictions in the evidence of P.Ws.1 and 8.

5. Per contra, Mr.S.Ravi, learned Standing counsel appearing for the respondent would argue that the occurrence was witnessed by P.Ws.1 to 4 and the complaint was also lodged without any delay. Since the eyewitnesses have consistently stated about the manner of occurrence, there is no reason to disbelieve the evidence and hence, the petitioners are not entitled for bail.



6. Heard the rival submissions and perused the materials available on records.

7. In the matter on hand, the occurrence had taken place at 9.30 p.m., on 04.09.2011. Admittedly, P.W.1 is the father of the deceased and he is the complainant in this case. It is seen from the records that P.W.1 is doing business at Chennai and on the date of occurrence, he is said to have come to the native place to see the incident. P.W.1 in his evidence stated that his son died on the spot. The testimony of P.W.8 shows that the deceased was alive and he took the deceased to the hospital. In this regard, we could see contradictions in the evidence of P.Ws.1 and 8. It is not in dispute that the F.I.R. reached the Court only on 05.09.2011, at 10.15 a.m., and the delay has not been properly explained by the prosecution. The prime accused A1 died pending trial and the other accused 4 to 6 were acquitted by the trial Court.

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 petitioners alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on each of them 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 Judicial Magistrate, Thiruvadanai.

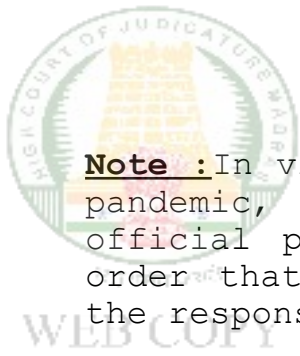
ii. The petitioners shall reside at Madurai and appear before Anna Nagar Police Station at 10.30 a.m., on every Monday until further orders.

iii. 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 of 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/-
30/06/2021

/ TRUE COPY /

/ /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 ADDITIONAL DISTRICT AND SESSIONS COURT, RAMANATHAPURAM.
2. THE JUDICIAL MAGISTRATE, THIRUVADANAI.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.
- 5 THE INSPECTOR OF POLICE
S.P.PATTINAM POLICE STATION,
RAMANTHAPURAM DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE INSPECTOR OF POLICE,
ANNA NAGAR POLICE STATION
MADURAI.

+1cc to Mr. M.S.Jeyakarthik, Advocate Sr.No.4270

ORDER
IN
CRL MP(MD) No.4901 of 2020
IN
CRL A(MD) No.301 of 2020
Date :30/06/2021

VB/VR/SAR.IV/06.07.2021/4P/9C