



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

Wednesday, the Twenty Fifth 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 MP(MD) No.5669 of 2021

IN

CRL A(MD)No.541 of 2019

MAHARAJA

... PETITIONER/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
RADHAPURAM POLICE STATION,
TIRUNELVELI DISTRICT
(CRIME NO. 146 OF 2016)

... RESPONDENT/COMPLAINANT

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 by the Learned IV Additional District and Sessions Judge, Tirunelveli District in S.C.No.407 of 2018 vide his judgment dated 02.04.2019 pending the disposal of the main Criminal Appeal pending on the file of this Hon'ble Court.

PRAYER IN CRL A(MD)No.541 of 2019:

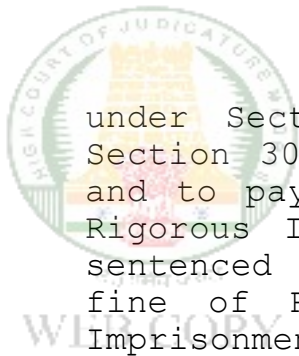
To call for the records of the judgment passed in S.C.No.407 of 2018 dated 02.04.2019 on the file of the IV Additional District and Sessions Judge, Tirunelveli and set aside the same and acquit the Appellant/Accused.

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.R.ANAND, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for State on behalf of the Respondent, the court made the following order:-

COMMON ORDER

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

The petitioner is the sole accused in S.C.No.407 of 2018 on the file of the IV Additional District & Sessions Judge, Tirunelveli, Tirunelveli District. The trial Court convicted him for the offence

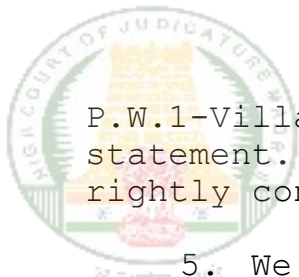


under Sections 302, 304 and 201 I.P.C., for the offence under Section 302 of I.P.C., sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one year Rigorous Imprisonment, for the offence under Section 364 I.P.C., sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one year Rigorous Imprisonment and for the offence under Section 201 I.P.C, sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one Year Rigorous Imprisonment. The sentences are ordered to be run concurrently. Challenging the above conviction and sentence, the present appeal has been filed. Pending appeal, the petitioner seeks suspension of sentence.

2. The case of the prosecution is that the deceased and the accused belong to a same village and the occurrence took place on 27.08.2016. Alleging that the deceased has misbehaved with the small child of the accused, the accused took the deceased in a motorcycle to a plantain field, attacked him with billhook and caused his death. After two days, on 29.08.2016, it was reported to the Village Administrative Officer and the Village Administrative Officer filed a complaint and based on that, a crime was registered under Section 302 of I.P.C against unknown accused. On 19.10.2016, the accused appeared before P.W.1-Village Administrative Officer and gave a voluntary confession admitting his guilt and thereafter, the F.I.R was altered and accused was arrested. After full-fledged trial, the trial Court convicted the accused and sentenced him as stated above. Challenging the same, the present appeal has been filed. Pending appeal, the petitioner seeks suspension of sentence.

3. Mr.R.Anand, learned counsel appearing for the petitioner would submit that it is the case based on circumstantial evidence. Except the evidence of P.Ws.7 and 8, who are the mother and brother of the accused, there is no other circumstance available against the petitioner/accused. Even the extra judicial confession is not voluntarily and he was compelled to give statement before the Village Administrative Officer. Further, yet another witness, namely P.W.13 said to have seen the deceased, who is working in parotta stall from which the deceased bought parotta. The circumstances relied on by the prosecution are not clearly prove the guilt of the accused. However, the trial Court, without considering the said facts, convicted the accused and hence, he seeks for suspension of sentence.

4. Mr.S.Ravi, learned Standing Counsel appearing for the State strongly opposed the bail application stating that due to some personal motive, the accused took the deceased in a motorcycle, it was seen by P.W.7 and P.W.8, who are the mother and brother of the deceased. That apart, P.W.13, who is an independent witness also seen, both the deceased and accused together prior to the occurrence. Thereafter, the accused only attacked the deceased with billhook and cut his private part and inserted the same in his mouth. After the occurrence, he himself voluntarily appeared before



P.W.1-Village Administrative Officer and gave a confession statement. Considering all those circumstances, the trial Court has rightly convicted the accused and there is no error in the Judgment.

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

6. It is the case of circumstantial evidence. The main circumstance relied upon is that P.Ws.7 and 8, who are the mother and brother of the deceased seen the accused taking the deceased in his motorcycle. Apart from that, yet another witness P.W.13, who is working in a Parotta Stall saw that the deceased purchased parotta for himself and for the accused. However, the next circumstance relied on by the prosecution is extra judicial confession given before the Village Administrative Officer. Since P.W.1 and P.W.8, who are the mother and brother of the deceased are interested witnesses and the other witness P.W.13 is only pointing out the accused and the remaining circumstance is only extra judicial confession given by the accused, whether it is voluntary or not during has to be seen only at the time of final hearing. In such circumstances, we are of the opinion that the petitioners have made out a *prima facie* case for grant of suspension of sentence.

7. 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 his 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, Valliyoor, Tirunelveli District.

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.

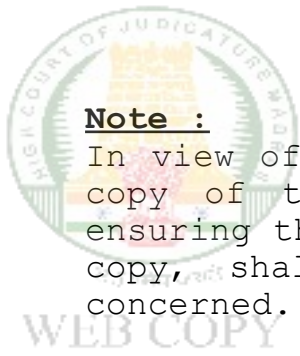
sd/-

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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 IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUNELVELI DISTRICT.
- 2.THE JUDICIAL MAGISTRATE,
VALLIYOOR, TIRUNELVELI DISTRICT.
- 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
- 4.THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
- 5.THE INSPECTOR OF POLICE
RADHAPURAM POLICE STATION,
TIRUNELVELI DISTRICT
- 6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP (MD) No.5669 of 2021

IN

CRL A (MD) No.541 of 2019

Date :25/08/2021

SA/PN/SAR.3/01.09.2021/4P/7C