



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

Thursday, the Thirtieth day of September 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.6683 of 2021

IN

CRL A(MD)No.179 of 2020

SUNDAR

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
V.K.PURAM POLICE STATION,
TIRUNELVELI DISTRICT
CRIME NO.178/2015

... 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 Execution of sentence by granting in S.C.No.640 of 2015, dated 05/03/2020 on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District.

PRAYER IN CRL A(MD)No.179 of 2020:

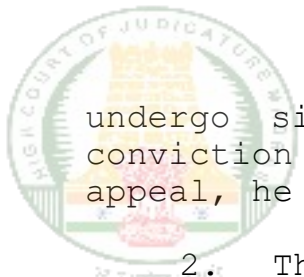
To admit this appeal on file, to call for the records from the Lower Court to SC.640/15 on the file of the IVth Additional Sessions Judge, Tirunelveli, Tirunelveli District and setaside the judgment dated 05.03.2020 by acquitting the appellants.

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.K.PRABHU, Advocate for the petitioner and of Mr.S.RAVI, Additional Public Prosecutor(crl.side) on behalf of the Respondent, the court made the following order:-

O R D E R

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

Totally there are two accused in S.C.No.640 of 2015, on the file of the learned IV Additional Sessions Judge, Tirunelveli District. The petitioner is the first accused and he was found guilty for the offence under Section 302 of IPC. The trial Court sentenced him to undergo life imprisonment for the offence under Section 302 IPC, and to pay a fine of Rs.5,000/-, in default, to



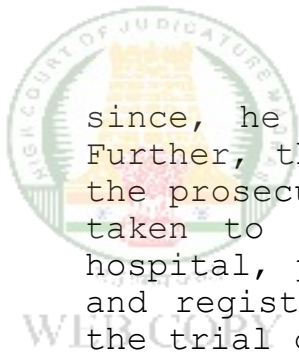
undergo simple imprisonment for two years. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2. The case of the prosecution is that, the deceased and the accused are belongs to same village. Earlier, there was a quarrel between them, for which, a criminal case has been filed by the deceased against the accused. Thereafter, the accused insisted the deceased to withdraw the complaint, but the deceased refused. Due to that motive, on 02.08.2015, while the deceased was sitting in his house, both the accused quarreled with the deceased; A2 attacked the deceased with wooden log on his left shoulder, but, it was thwarted by the deceased and thereafter, A2 caught hold of the deceased and A1 inflicted stab injuries on the stomach of the deceased. Immediately, the deceased was taken to the hospital. Subsequently, on 06.08.2021, he succumbed to injuries. Earlier, based on the statement given by the deceased in the hospital, the FIR was registered for the offence under Section 324 IPC., subsequently, after his death, it has been altered into one under Section 302 IPC.

3. The trial Court, after considering the materials, convicted and sentenced the accused as above. Challenging the same, the petitioner has filed the present appeal, and pending appeal, he seek for suspension of sentence.

4. The learned counsel appearing for the petitioner would submit that the occurrence said to have taken place at 11.30 p.m., on 02.08.2015 and the FIR was registered only on the next day at 12.30 a.m., and there was a long delay and it is not properly explained by the prosecution. That apart, there is also a long delay in despatching the FIR. Due to some previous motive, the accused has been falsely implicated in this case. The learned counsel further submits that even as per the prosecution case, there was a wordy quarrel, in which, the petitioner said to have attacked the deceased on his stomach, for which, originally the crime was registered for the offence under Section 324 IPC. Since proper treatment was not given to the petitioner, he died after three days. At any rate, in the said circumstances, the offence under Section 302 IPC., is not made out. He would further submit that the co-accused/A2 in this case has already been granted the relief of suspension of sentence by this Court.

5. Mr.S.Ravi, the learned Additional Public Prosecutor for the State would contend that there was a strong motive available in this case against the accused. There are two eyewitnesses in this case viz., P.W.1 - daughter of the deceased and P.W.2, friend of the deceased and both of them were present in the house at the time of occurrence and there is no reason to disbelieve their testimony. That part, the accused has strong motive against the deceased, as



since, he has not withdrawn that complaint, there was a quarrel. Further, the delay in filing the FIR has been properly explained by the prosecution. Immediately after the occurrence, the deceased has taken to the hospital and after receipt of intimation from the hospital, police went there, recorded the statement of the deceased and registered the FIR. Considering the gravity of the offence, the trial court has rightly convicted the accused.

6. We have considered the rival submissions made and perused the materials available on record.

7. From the perusal of the records it is seen that the occurrence has taken place at 11.30 p.m., in the night hours on 02.08.2015. P.W.1 is the daughter and P.W.2 is the friend of the deceased and both of them were present in the house, at the time of occurrence. From their evidence it is seen that earlier, there was a quarrel between the accused and the deceased, during the quarrel, the petitioner said to have attacked the deceased with knife and caused serious injuries. Out of sudden provocation, the accused attacked the deceased and caused injury and he died in the hospital after three days. That apart, there is considerable delay in filing the FIR. The petitioner has no bad antecedents. The petitioner is in jail for more than 1-1/2 years. Further, in respect of A2, who is similarly placed accused in this case, his sentence has been suspended by this 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 petitioner/A1 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 learned Judicial Magistrate, Ambasamudram, Tirunelveli, Tirunelveli District.

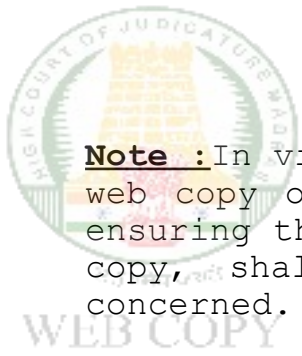
ii. The petitioner shall appear before the trial Court at 10.30 a.m., on the first working day of every English calendar month, until further orders.

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/-
30/09/2021

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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 IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI, TIRUNELVELI DISTRICT.
 - 2.THE JUDICIAL MAGISTRATE
AMBASAMUDRAM, TIRUNELVELI,
TIRUNELVELI DISTRICT.
 - 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
 - 4.THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
 - 5.THE INSPECTOR OF POLICE
V.K.PURAM POLICE STATION,
TIRUNELVELI DISTRICT
 - 6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.K.PRABHU, Advocate SR.No.6736

ORDER

IN

CRL MP(MD) No.6683 of 2021 IN
CRL A(MD)No.179 of 2020
Date :30/09/2021

MPK

SA/SKN/SAR.3/01.10.2021/4P/8C