



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

Wednesday, the Tenth day of February 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.6771 of 2020

IN

CRL A(MD) No.361 of 2020

POTHUMPONNU

... PETITIONER/APPELLANT/
ACCUSED No.1

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ABIRAMAM POLICE STATION,
RAMANATHAPURAM DISTRICT.
CRIME NO.93 OF 2018

... RESPONDENT/RESPONDENT/
COMPLAINANT

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 against petitioner in S.C.No.35 of 2019 on the file of the Principal District and Sessions Judge, Ramanathapuram dated 18.03.2020, and release on bail till the disposal of the appeal.

PRAYER IN CRL A(MD) No.361 of 2020:

Pleased to call for the entire records connected to the judgment in S.C.No.35 of 2019 on the file of the Principal District and Sessions Judge, Ramanathapuram dated 18.03.2020 and set aside the conviction and sentence imposed against the appellant.

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.ALAGUMANI, Advocate for the petitioner and of Mr.R.ANANDHARAJ, 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 petitioner along with one Velmurugan, S/o Karuppiah were charged for commission of murder. They faced trial before the Principal District and Sessions Court, Ramanthapuram in S.C.No.35



of 2019. The trial Court having found that the prosecution has succeeded in providing the charges levelled against the accused convicted them for offences under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.2,000/-. The said Velmurugan, who arrayed as A2, was convicted for the offence under Section 449 IPC and sentenced to undergo 5 years R.I with fine of Rs.5,000/-. Questioning the conviction and sentence, the first accused has come forward with this appeal. Pending appeal, she seeks for suspension of sentence.

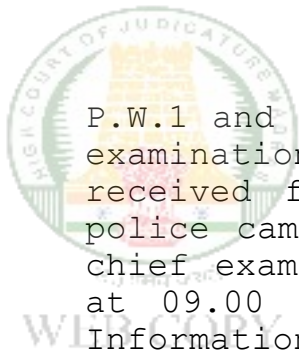
2.The case of the prosecution is that the deceased Arumugam is the husband of the first accused. The second accused is the step brother of the deceased. P.W.1 is the mother of the deceased. The story of the prosecution is that the deceased Arumugam was working in the State of Kerala. Taking advantage of that, the second accused developed illicit intimacy with the first accused, which was objected by the deceased. So, on 17.07.2018 at 12.00 midnight, the first accused with aruval and second accused with iron rod assaulted the deceased and thereafter, poured the kerosine on the deceased and set fire.

3.The learned counsel for the petitioner Mr.R.Alagumani would submit that the prosecution has suppressed earlier version of P.W.1. According to the learned counsel for the petitioner, P.W.1 categorically deposed that immediately, after the incident, the deceased was removed to the Paramakudi Government Hospital and thereafter, the police came and obtained statement from her. But the Investigating Officer deposed that the complaint came to be lodged by P.W.1 at 09.00 a.m in the police station. It is also submitted that though the First Information Report was registered at 09.30 a.m, it reached the concerned court at 17.30 hours. The delay in lodging the complaint and the First Information Report in reaching the Court remained unexplained. It is also contended that the medical evidence is not supporting the case of the prosecution and hence, she is entitled for suspension of sentence.

4.Per contra, the learned Additional Public Prosecutor Mr.R.Anandharaj would oppose the application contending that P.W.1, who is the mother of the deceased, has categorically deposed about the illicit intimacy of the accused and immediately after the occurrence, she saw that both the accused ran away from the scene of occurrence with weapons. It is further submitted that though P.W.2 to P.W.7 and P.W.9 turned hostile, but the evidence of P.W.1 and P.W.8 would prove that the complicity of the accused in this case and prayed for dismissal of the petition.

5.Heard both sides and perused the materials available on records.

6.In the instant case, with regard to the contradiction in [~~services to the police~~](https://hcservices.courtscomplaints/) could be found from the testimony of



P.W.1 and P.W.20. In the chief examination as well as in the cross examination, P.W.1 has categorically stated that the complaint was received from her by the police in the hospital itself and the police came to the hospital within 10 minutes. But P.W.20 in the chief examination has stated that P.W.1 came to the police station at 09.00 a.m and after obtaining complaint from her, the First Information Report was registered. That apart, it appears that no explanation was forthcoming to explain the delay pointed out by the learned counsel for the petitioner.

7. In the light of the above facts, 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 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, Kamuthi.

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 petitioner is not able to appear, leave is granted to the petitioner 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/-
10/02/2021

/ 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



TO

1. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
RAMANATHAPURAM
2. THE DISTRICT MUNSIF AND JUDICIAL MAGISTRATE,
KAMUTHI.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
4. THE INSPECTOR OF POLICE,
ABIRAMAM POLICE STATION,
RAMANATHAPURAM DISTRICT.
5. THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN, MADURAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.6771 of 2020
IN
CRL A (MD) No.361 of 2020
Date :10/02/2021

SKN
TK/VR/SAR.2/16.02.2021/4P/7C