



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

Wednesday, the Sixth 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.6129 of 2020
IN
CRL A(MD) No.478 of 2019

1 JUSTIN
2 ALVIN @ ALBEN @ ALBERT ... PETITIONERS/ APPELLANTS

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
KALIYAKAVILAI POLICE STATION,
KANYAKUMARI DISTRICT. ... 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 petitioners/appellants on bail suspending the sentence imposed upon them by Judgment dated 23.3.2019 in SC.No.86 of 2010 on the file of the Additional District and Sessions Judge (Fast Track) Kanyakumari District at Nagercoil.

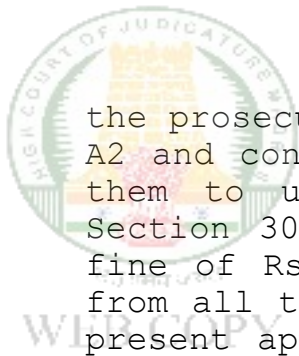
PRAYER IN CRL A(MD) No.478 of 2019

To call for the records of the judgment passed in S.C.No.86 of 2010 dated 23.03.2019 on the file of the Additional District and Sessions Judge (Fast Track) Kanyakumari District at Nagercoil, set aside the same.

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.RAMASAMY, Advocate for Mr.C.T.PERUMAL, Advocate for the petitioners 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.**]

A1 to A4 in S.C.No.86 of 2019 on the file of the Additional District and Sessions Judge, (Fast Track), Kanniyakumari at Nagercoil were charged for the offences under Sections 302, 326 and 212 IPC. The Trial Court, on appreciation of evidence, held that



the prosecution has succeeded in proving the charges against A1 and A2 and convicted them under Sections 302 and 326 IPC and sentenced them to undergo life imprisonment with fine of Rs.10,000/- for Section 302 IPC and to undergo 5 years Rigorous Imprisonment with fine of Rs.1,000/- for Section 326 IPC. A3 and A4 were acquitted from all the charges. Challenging the conviction and sentence, the present appeal has been filed by A1 and A2. Pending appeal, they seek suspension of sentence.

2.The case of the prosecution is that the accused 1 and 2 are brothers and their native is Athancode. A3 and A4 are their friends. On 29.11.2009 at 10.30 a.m, the first accused attended a marriage function of one Kavitha. It is the further case of the prosecution that the deceased Sindhumon served food for the first accused and some of the food articles fell on him. So, a wordy quarrel arose between them, in which, the deceased pushed A1 down in the presence of the public. In pursuance thereof, on the same day, at 4.30 p.m, when the accused were standing in front of the grocery shop of one Mani, the deceased came there, again wordy altercation ensued between the accused and the deceased, in which, the accused 1 and 2 are inflicted the fatal injuries on the deceased.

3.Mr.Ramasamy, learned counsel appearing for the petitioners would argue that though the prosecution has cited P.W.1 to P.W.5 as eyewitnesses to the occurrence, but their presence in the scene of occurrence is highly doubtful. The learned counsel would further add that the testimony of P.W.2 would show that only after the deceased fell down, P.W.2 to P.W.5 came to the scene of occurrence. P.W.2, who is the cousin of the deceased, has not spoken about the presence of the other accused in the scene of occurrence. It is also submitted that the injury sustained by A2 was not at all explained by the prosecution, which shows that the genesis of the case has been suppressed by the police. It is further contended that even if the prosecution is accepted that the accused cannot be convicted under Section 302 IPC and they are entitled for exception under Section 300 IPC. It is the submission of the learned counsel for the petitioners that the occurrence had taken place in sudden quarrel and it was not preplanned.

4.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the State would vehemently opposed the petition contending that the motive for the commission of the offence has been categorically explained by the prosecution through the evidence of P.W.1 to 5. According to the learned Additional Public Prosecutor, P.W.1 is an injured eyewitness and nothing is on record to show, he falsely implicates the accused in this case and prayed for dismissal of the petition.

5.In the case on hand, it is the case of the prosecution that on 29.11.2009 at 10.30 a.m, a wordy quarrel ensued between A1 and the deceased was serving food to A1, in which, A1



said to have been pushed down by the deceased. Annoyed and humiliated over the act of the deceased, on the same day, at 4.30 p.m, the accused 1 to 4 joined together and committed murder of the deceased.

6.It is not disputed that in the course of the same transaction, A2 has also sustained injury and treated by P.W.9. Though the prosecution has examined P.W.1 to P.W.5 as eyewitnesses to the incident, but the injury sustained by A2 was not at all explained by the eyewitnesses. It is further seen that there are medical discrepancies in the evidence of P.W.1 to P.W.5. It is also seen that both the petitioners are brothers and they have been in judicial custody for the past two years.

7.In view of the above, we are of the opinion that the Petitioners are 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 petitioners 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 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 Judicial Magistrate No.I, Kuzhithurai.

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.

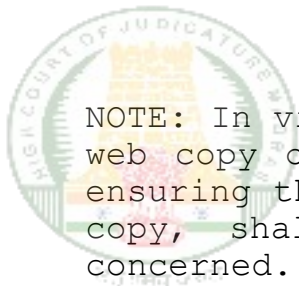
iii. The petitioners shall stay at Madurai and appear before the learned Judicial Magistrate No.I, Madurai at 10.30 a.m., on all working days, until further orders.

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 Judicial Magistrate No.I, Madurai on any other day, as determined by the said Court, in lieu of the day on which they would absent.

sd/-
06/01/2021

/ 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.

WEB COPY

- TO
- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE
(FAST TRACK) KANYAKUMARI DISTRICT AT NAGERCOIL.
 - 2 THE JUDICIAL MAGISTRATE NO.I, KUZHITHURAI.
 - 3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
 - 4 THE JUDICIAL MAGISTRATE NO.I, MADURAI.
 - 5 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
 - 6 THE INSPECTOR OF POLICE
KALIYAKAVILAI POLICE STATION, KANYAKUMARI DISTRICT.
 - 7 THE SUPERINTENDENT,CENTRAL PRISON,
PALAYAMKOTTAI.
 - 8 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.C.T.PERUMAL, Advocate (SR-81[I] dated 06/01/2021)

ORDER
IN
CRL MP(MD) No.6129 of 2020
IN
CRL A(MD) No.478 of 2019
Date :06/01/2021

MS/PN/SAR-2/11.01.2021/4P.10C