



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

Monday, the Twenty Seventh day of September Two Thousand and Twenty One

WEB COPY

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice J.NISHA BANU

CRL MP(MD) No.6781 of 2021
IN
CRL A(MD)No.604 of 2019

M.ALAGARSAMY

... PETITIONER/APELLANT

Vs

THE STATE REP.BY
THE SUB INSPECTOR OF POLICE
KELAVALAVU POLICE STATION, MELUR,
MADURAI DISTRICT
IN CRIME NO.98 OF 2012

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspenge the sentence in SC.No.306/2016 on the file of the 1-Additional Sessions and District Judge Madurai on 03/01/2018 till the disposal of Criminal Appeal

PRAYER IN CRL A(MD)No.604 of 2019:

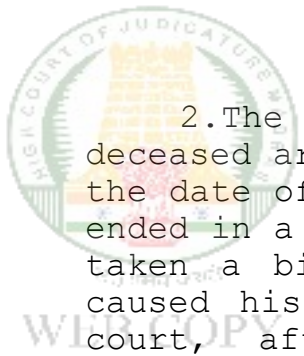
To calling for records pertaining to the conviction and sentence passed in S.C.No:306/2016 on the file of 1-Additional Sessions and District Judge Madurai dated 03-01-2018 and set aside the same as illegal and acquit the appellant.

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.J.Gunaseelan Muthaiah, 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.**)

The petitioner is the sole accused in S.C.No.306 of 2016 on the file of the I Additional Sessions and District Judge, Madurai. He was found guilty for the offence under Section 302 I.P.C and sentenced to undergo imprisonment for life and pay a fine of Rs.5000/- (Rupees five thousand only) in default, to undergo simple imprisonment for one year. 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 accused and the deceased are neighbors. There was a land dispute between them and on the date of occurrence, initially there was wordy altercation and it ended in a quarrel, in which, the petitioner/accused is said to have taken a big stone and attacked on the head of the deceased and caused his death. Hence, the case has been registered. The trial court, after considering the oral and documentary evidence, convicted the sole accused as aforesaid.

3.Mr.J.Gunaseelan Muthaiah, learned counsel for the petitioner/sole accused submitted that the occurrence took place in night hours i.e at 9.15 p.m. The first wife of the deceased and her relatives are eye witnesses to the occurrence and they could not have seen the occurrence since occurrence took place in night hours. Even as per their evidence, there was wordy quarrel and due to sudden provocation, the accused attacked the deceased with a stone that was available in the place of occurrence. Pointing out the said evidence, the learned counsel would submit that there is no intention to kill the deceased. The learned counsel would further submit that the petitioner/accused has no bad antecedents and he has been undergoing incarceration from the year 2018 and therefore, he seeks for suspension of sentence to the petitioner/sole accused.

4.Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State strongly opposing the bail application would submit that the accused and the deceased are neighbors and due to civil dispute, the accused attacked the deceased with a big stone and caused serious head injury and the deceased succumbed to injury and the occurrence happened in the house of the deceased and P.W.1 is the wife of the deceased and P.W.2 and P.W.3 are neighbours. They have spoken about the occurrence. Considering the gravity of the offence, suspension of sentence need not be granted to the petitioner.

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

6.The occurrence is said to have taken place in night hours i.e at 9.15 p.m. P.W.1 is the wife of the deceased. P.W.2 and P.W.3 are the neighbors. There was a civil dispute between the parties, due to which wordy quarrel arose and on sudden provocation, the petitioner/sole accused is said to have attacked the deceased with stone, which was available in the scene of occurrence and caused death. It is also seen that the accused has no bad antecedents and he has been undergoing incarceration for more than 3 years. Therefore, We find that, a *prima facie* case has been made out 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



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 I Additional District and Sessions Judge, Madurai.

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/-

27/09/2021

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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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.

2 THE SUPERINTENDENT, CENTRAL JAIL, MADURAI

3 THE SUB INSPECTOR OF POLICE
KELAVALLAVU POLICE STATION, MELUR,
MADURAI DISTRICT

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.J.GUNASEELANMUTHAIAH, Advocate SR.No.6620

ORDER IN

CRL MP(MD) No.6781 of 2021 IN
CRL A(MD)No.604 of 2019
Date :27/09/2021

SA/PN/SAR.4/28.09.2021/3P/6C