



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

Monday, the Twenty Fifth 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.6217 of 2020

IN

CRL A(MD) No.181 of 2020

SURESH

... PETITIONER/PETITIONER/
APPELLANT A1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
DINDIGUL TOWN SOUTH POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.483 OF 2011.

... 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 sentence imposed on the Petitioner/Appellant A1 in SC.No.50 of 2014 on the file of the Learned Principal District and Sessions Judge, Dindigul District dated 26.2.2020 and enlarge the petitioner on bail pending disposal of the instant Criminal Appeal.

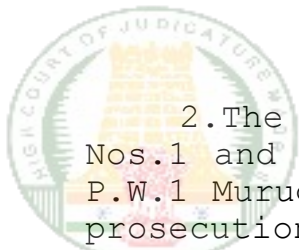
Prayer in CRL A(MD) No.181 of 2020:

To call for the records relating to the judgment passed in S.C.No.50/2014 dated 26.2.2020 on the file of the learned Principal District and Sessions Judge, Dindigul and set aside the same and acquit the appellants/accused from the charges leveled against them.

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.N.ANANTHAPADMANABHAN, Advocate for M/S.APN LAW ASSOCIATES for the petitioner and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by G.ILANGO VAN, J.]

A1, who faced the charge for the offence under Section 302 IPC and convicted by the learned Principal District and Sessions Judge, Dindigul in S.C.No.50 of 2014, has preferred this appeal. Pending appeal, he is on bail for suspension of sentence.



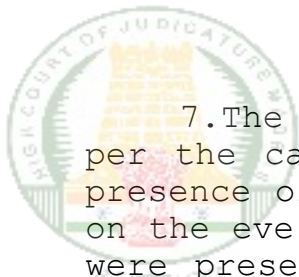
2.The case of the prosecution in brief is that the accused Nos.1 and 2 are the brothers and third accused is their relative. P.W.1 Murugan is the brother of the deceased. It is the case of the prosecution that the friend of the deceased Chandru was murdered by the relatives of the accused and due to which, there was previous enmity between the accused and the deceased. So, the deceased was sent to his sister's house at Periyakulam and on 11.06.2011, he came down to his native place to attend Kalliamman Temple festival. When the deceased, P.W.1, P.W.4 and his friends were watching Orchestra organized at Kalliamman Temple on 12.06.2011 at about 10.30 p.m, a dispute arose between the accused and the deceased and in pursuance thereof, A2 and A3 caught hold of the deceased and A1 inflicted the injuries on his right chest.

3.To prove the charges, the prosecution examined 21 witnesses and marked 24 documents and 8 materials objects. On the side of the accused, no witness was examined and no document marked.

4.At the conclusion of the trial, the trial court came to the conclusion that the charges framed against the accused were proved beyond all reasonable doubt and accordingly, convicted and sentenced the petitioner and other namely A3 for the offence under section 302 IPC and imposed a fine of Rs.10,000/- each. Apart from that, punishment under section 341 IPC was imposed on the 3rd accused, who has been already released on bail by suspending the sentence, as per the order, dated 25.08.2020 made in Crl.MP(MD)No.3142 of 2020 in Crl.A(MD)No.181 of 2020. At that time, the learned Senior counsel appearing for the petitioner withdrew the suspension application and accordingly, it was dismissed as withdrawn. Subsequent to that, this petition came to be filed seeking suspension of sentence.

5.The learned Senior counsel for the petitioner would submit that it is a case of the deceased himself, while informing the Doctor, who recorded Ex.P24 accident register that he was attacked by unknown persons, when the case of the prosecution is that the accused persons and the deceased belong to the same locality, were known to each other and previous motive was also exists between them.

6.Similarly, it is a case of blood brother namely PW1-who stated to be the eye witness to the occurrence and first informant under Ex.P1-not only turning himself hostile, but also makes the presence of the alleged eye witnesses namely PW2 and PW3 doubtful in the place of occurrence. The main crux of the argument of the learned Senior counsel for the petitioner revolves around this submission. According to him, PW1 has deposed that on the date of the occurrence, he along with PW2 and PW3 went to Metupatti and only on information, he returned to the village and by that time, the deceased was taken to the hospital. PW1 not only turned hostile with regard to witness the occurrence, but also disowned the contents of



7.The next contention on the part of the petitioner is that as per the case of the prosecution, the occurrence took place in the presence of a big crowd, which assembled in the place of occurrence on the eve of temple festival. Except PW2 and PW3, other persons who were present in the place of occurrence were not examined. It is further contended that PW4 and PW5, who are the parents of the deceased were not present in the place of occurrence, but PW5 the mother has improved her version before the trial court stating that she actually witnessed the occurrence, whereas when she was examined by the Investigating Officer, she has not stated like that. According to him, this contradiction would show that she made improvement. Similarly, PW6 was also not present in the place of occurrence, she improved the same while giving evidence at the time of trial. So according to him, the eye witnesses are totally unbelievable and if really PW2 and PW3 were present in the place of occurrence, only they would have taken the deceased to the hospital.

8.It is also contended that the prosecution has not established the place of occurrence since different versions have been spoken over that, one in Ex.P24 and another by the witnesses.

9.But however, how these contradictions affect the case of the prosecution and how the trial court in spite of these contradictions have recorded the finding of guilt can be considered only at the time of argument in the main appeal.

10.According to the learned Additional Public Prosecutor, it is a case of eye witness, who actually witnessed the occurrence. PW2 and PW3 have clearly deposed about the occurrence and no reasonable doubt was created by the accused during trial. So he insisted that the petition to be dismissed stating that the petition has no merit as the deceased was brutally attacked.

11.Coming back to the first para of the discussion, the deceased himself has informed the Doctor, who prepared Ex.P24 that he was assaulted by unknown persons. Further, the prosecution has not established the reasons for PW1 to turn hostile. Considering the facts and circumstances of the case and in the light of the above submissions made by the learned Senior counsel appearing for the petitioner, we are of the considered view that there are arguable points involved this case and it may not be possible for the criminal appeal to be taken up for hearing at the earliest point of time, So, we are inclined to grant suspension of sentence to the petitioner with certain conditions.

12.Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** with two sureties each for a like sum to



on further condition that the petitioner shall stay at Coimbatore and appear before the Judicial Magistrate No.1, Coimbatore said court daily at 10.30 am pending appeal.

sd/-
25/01/2021

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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 PRINCIPAL DISTRICT AND SESSIONS JUDGE,
DINDIGUL.
- 2 THE JUDICIAL MAGISTRATE NO.II,
DINDIGUL.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
DINDIGUL DISTRICT.
- 4 THE JUDICIAL MAGISTRATE NO.I,
COIMBATORE.
- 5 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
COIMBATORE.
- 6 THE INSPECTOR OF POLICE,
DINDIGUL TOWN SOUTH POLICE STATION,
DINDIGUL DISTRICT.
- 7 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 8 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-447[I] dated 25/01/2021)

ORDER
IN
CRL MP(MD) No.6217 of 2020
IN
CRL A(MD) No.181 of 2020
Date :25/01/2021

dss
JM/VR/SAR I/25.01.2021/4P/10C

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