



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

Wednesday, the Sixth day of October 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.7357 of 2021
IN
CRL A(MD)No.185 of 2020

SATHISHKUMAR ... APPELLANT/PETITIONER/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
AERIAL POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.350 OF 2015.

... 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 order dated 26.07.2019 in S.C.No.21 of 2017 on the file of the Hon'ble I Additional District Sessions Judge, Thoothukudi and release the Petitioner on bail till the disposal of the appeal.

PRAYER IN CRL A(MD)No.185 of 2020:

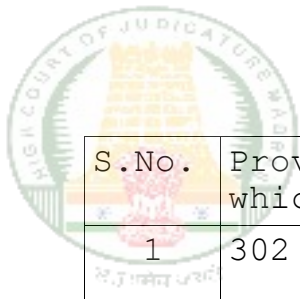
To call for the entire records connected to the judgment in S.C.No.21 of 2017 on the file of the Hon'ble I Additional District Sessions Judge, Thoothukudi dated 26.07.2019 and set aside the conviction and sentence imposed against the appellant.

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.S.RAMESH KUMAR, Advocate for the Appellant and of Mr.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

The petitioner is the first accused in S.C.No.21 of 2017, on the file of the learned I Additional District Sessions Judge, Thoothukudi. Totally there are three accused. Pending trial, both A2 and A3 died. The petitioner/A1 was found guilty and convicted and sentenced as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



S.No.	Provision under which convicted	Sentence of Imprisonment	Fine Amount
1	302 IPC	Life Imprisonment	Rs.1,000/-, in default, to undergo 6 months R.I.
2	380 IPC	5 Years R.I.	Rs.1,000/-, in default, to undergo 6 months R.I.
3	120(b) IPC	Life Imprisonment	Rs.1,000/-, in default, to undergo 6 months R.I.
4	450 IPC	7 Years R.I.	Rs.1,000/-, in default, to undergo 6 months R.I.

The sentences were ordered to run concurrently.

2. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, the petitioner / appellant sought for suspension of sentence.

3. The case of the prosecution is that the deceased and the accused are construction labours, worked under P.W.10. The appellant / A1 borrowed a sum of Rs.,10,000/- from the deceased and when she demanded the money, there was a quarrel between them. Therefore, the appellant maintained animosity against the deceased. On 19.12.2015, at about 22.30 hrs., when the deceased was alone in the house, all the accused entered into the house of the deceased, smothered her and caused her death. The crime was registered. After trial, the accused was convicted and sentenced as stated above.

4. The learned counsel appearing for the petitioner submitted that it is a case of circumstantial evidence. Except the evidence of P.W.16, who said to have seen the accused outside the house of the deceased before the occurrence, there was no other circumstances available and the petitioner has been implicated based on the confession of A2. The trial Court, without considering the same, has convicted the accused and the petitioner is in jail for more than two years.

5. The learned Additional Public Prosecutor appearing for the State would submit that both the deceased and the accused are construction labours, worked under P.W.10. P.W.16 is the independent witness, who seen all the three accused standing outside the house of the deceased at 10.30 a.m., prior to the occurrence. That apart, the stolen earshed has also been recovered from A1, on his confession. Considering those circumstances, the trial Court has rightly convicted the accused and there is no error in the Judgment, considering the gravity of the offence, sentence cannot be suspended.



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

7. It is a case of circumstantial evidence. The strong circumstances relied upon by the prosecution is the last seen theory, wherein, P.W.16, said to have seen all the accused standing outside the house of the deceased. Even though P.W.16 knew the occurrence on the very next day, he kept quite and he has given a statement before the police after ten days. That apart, the recovery is also doubtful. Further, the accused have no bad antecedents and he is in jail for more than two years. Considering all those circumstances, we find a prima facie case has been made out for grant of suspension of sentence.

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 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 I Additional District Sessions Judge, Thoothukudi.

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/-

06/10/2021

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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. I ADDITIONAL DISTRICT SESSIONS JUDGE,
THOOTHUKUDI.

2. THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.

3. THE INSPECTOR OF POLICE
AERAI POLICE STATION,
TIRUNELVELI DISTRICT.

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

ORDER

IN

CRL MP (MD) No. 7357 of 2021

IN

CRL A (MD) No. 185 of 2020

Date : 06/10/2021

SA/JM/SAR.3/07.10.2021/4P/5C