



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

Wednesday, the Twentieth day of January Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and

The Hon`ble Mr.Justice G.ILANGOVAN

CRL.M.P.(MD) Nos.6715 & 6720 of 2020
IN

CRL.A.(MD) Nos.116 & 115 of 2020

CRL MP(MD) . 6715 OF 2020 :

1 VIJAY @ KADAL VIJAY @ VIJAYAKUMAR

... PETITIONER/
APPELLANT/ACCUSED NO.3

2 MURUGAN @ THIRUMURUGAN

... PETITIONER/
APPELLANT/ACCUSED NO.4

CRL MP(MD) . 6720 OF 2020 :

MANI @ MANIKANDAN

... PETITIONER/
APPELLANT/ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
GANESHNAGAR POLICE STATION,
I/C TOWN POLICE STATION,
PUDUKKOTTAI.
CRIME NO.42 OF 2015

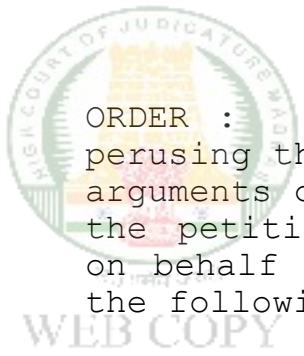
... RESPONDENT/
RESPONDENT/COMPLAINANT
IN BOTH THE PETITIONS

Common Prayer in CRL.M.P.(MD) Nos.6715 & 6720 of 2020 in CRL.A.(MD) Nos.116 & 115 of 2020:

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 by the judgment dated 29.11.2019 passed in S.C.No.103 of 2016 on the file of the Learned Additional District and Sessions Judge, Pudukottai and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

Common Prayer in CRL.A.(MD) Nos.116 & 115 of 2020:

Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, pleased to set aside the Judgment and Conviction dated 29.11.2019 by the Additional District and Sessions Judge, Pudukottai in S.C.No.103 of 2016 and acquit the appellants.



ORDER : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.E.SOMASUNDARAM, Advocate for the petitioners in both the petitions and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent in both the petitions, the court made the following order:-

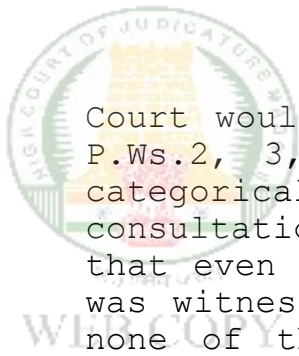
[Order of the Court was made by K.KALYANASUNDARAM, J.]

The petitioners along with one Moorthi @ Sivaramakrishna Moorthi were tried by the Additional District and Sessions Court, Pudukkottai, in S.C.No.103 of 2016, for the commission of offence punishable under Sections 120B, 294(b), 302 and 506(ii) I.P.C.

2. In order to substantiate the charges, the prosecution examined 23 witnesses and marked 20 documents along with six material objects and on behalf of the accused, one witnesses was examined and three documents were marked. On appreciation of the evidence adduced by the parties, the learned Trial Judge came to the conclusion that the prosecution has succeeded in proving the charges framed against A2 to A4 and acquitted A1 from the charges framed against him. Accordingly, A2 to A4 were sentenced to undergo various imprisonments, including life imprisonment with fine. Questioning the propriety of the Judgment of the Trial Court, A2 to A4 have preferred the above appeals and pending appeals, they seek suspension of sentence.

3. The case of the prosecution is that A2 - Mani @ Manikandan is the son of A1 Moorthi @ Sivaramakrishna Moorthi, A3 - Vijay @ Kadal Vijay @ Vijayakumar and A4 - Murugan @ Thirumurugan are brothers and they are friends of A2. The deceased Santhanam is the cousin brother of P.W.1 - Meenakshi Sundaram. It is the further case of the prosecution that both A1 and the deceased were running Sculpture Making Industries in the premises belonging to the Monastery of Ulaganathaswami Temple. It is alleged that A1 encroached upon the pathway, which caused inconvenience to the neighbours. Hence, the deceased lodged a complaint and in pursuance thereto, the encroachment made by A1 was removed. Annoyed over the act of the deceased, A1 and A2 along with A3 and A4 said to have attacked the deceased on 23.01.2015 at 05.30 p.m., when he was standing before Anand Tea Shop along with P.Ws.1 to 3. It is the case of the prosecution that, A2 to A4 came in a Motorcycle bearing registration No.TN51 D5374 and A2 scolded the deceased in filthy language and attacked him with Aruval on the head of the deceased. Thereafter, A3 and A4 had also joined with A2 and inflicted injuries on the face and right shoulder and thereby, caused his death.

4. Mr.E.Somasundaram, learned counsel appearing for the petitioners, would urge that the prosecution has not come to the Court with clean hands and the materials produced before the Trial



Court would show that there are inconsistencies in the evidence of P.Ws.2, 3, 4, 21 and 22. He would further add that P.W.1 has categorically stated that the complaint (Ex.P1) was preferred after consultation and deliberation with P.Ws.1 to 3. It is also argued that even though the occurrence had taken in a public place and it was witnessed by the owner of the Tea Shop and his employers, but, none of the independent witnesses have been examined. Further, immediately after the occurrence, the deceased was carried to the Hospital by P.Ws.1 to 3 and the Doctor declared him brought dead.

5. According to the learned counsel, production of Accident Register would show the condition of the deceased when he was brought to the Hospital, but it was not produced and the Doctor, who examined the deceased at the first instance, was also not examined. The learned counsel drawing the attention of this Court to Ex.D1 would argue that P.W.22 was on leave from 23.01.2015 to 25.01.2015, but P.Ws.21 and 22 would say that investigation was initially commenced by P.W.21 on 23.01.2015 and the further investigation was continued by the regular Inspector P.W.22 on 24.01.2015. It is also stated that the delay in lodging the complaint and it reaching the Court was not explained and the person, who lodged the complaint, P.W.1 not supported the prosecution case. In view of the above material contradictions, the petitioners are entitled to suspension of sentence.

6. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the State, would argue that A1 and A2 had clear motive to eliminate the deceased in view of removal of the encroachment made by A1. He would further argue that both A1 and the deceased were Pangalies and they were doing sculpture business in adjacent premises. He would further add that though the prosecution has examined independent witnesses, however, unfortunately, they have not supported the prosecution case and hence, they were treated as hostile witnesses. According to the learned Additional Public Prosecutor, there was no delay in lodging the complaint and there is no flaw in the investigation and the decision of the learned Trial Judge and prayed for dismissal of the applications.

7. We have carefully considered the rival submissions and perused the materials available on record.

8. In the case on hand, the prosecution has come to the Court with a clear case that due to the previous enmity between A1 and the deceased, on 23.01.2015, all the accused conspired together and attacked the deceased with Aruval. The Trial Court having found that there was no material against A1 chose to acquit him from all the charges. A perusal of the evidence of P.Ws.2 and 3 as well as P.W.14, who conducted autopsy on the dead body of the deceased and Ex.P8 - Postmortem Report would candidly show that A2 caused fatal injury on the deceased by attacking on his head, A3 attacked the



deceased on his face and A4 attacked on his right shoulder. Considering the arguments advanced by the learned counsel for the petitioners and the overt acts attributed against the them, we are of the opinion that A2, namely, Mani @ Manikandan is not entitled for suspension of sentence.

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9. However, in the light of the above facts, the sentence imposed on A3 - Vijay @ Kadal Vijay @ Vijayakumar and A4 - Murugan @ Thirumurugan is suspended and they are released on bail pending appeals.

10. Accordingly, **Crl.M.P.(MD) No.6720 of 2020 filed by A2 - Mani @ Manikandan is dismissed** and **Crl.M.P.(MD) No.6715 of 2020 filed by A3 - Vijay @ Kadal Vijay @ Vijayakumar and A4 - Murugan @ Thirumurugan is allowed** and the substantive sentence of imprisonment imposed on them is suspended, subject to the following conditions:

i. The petitioners (A3 and A4) 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 learned Judicial Magistrate, Pudukkottai.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioners (A3 and A4) shall stay at Salem and report before the learned Judicial Magistrate No.I, Salem, daily at 10.30 a.m. until further orders.

iv. On any particular date, if the petitioners (A3 and A4) are not able to appear, leave is granted to them to file an application under Section 317 Cr.P.C. and appear before the learned Judicial Magistrate No.I, Salem on any other day, as determined by the said Court, in lieu of the day on which they would absent.

sd/-
20/01/2021

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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.

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



TO

1 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PUDUKOTTAI.

2 THE JUDICIAL MAGISTRATE, PUDUKKOTTAI.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI.

4 THE JUDICIAL MAGISTRATE NO.I, SALEM.

5 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SALEM.

6 THE INSPECTOR OF POLICE,
GANESHNAGAR POLICE STATION,
I/C TOWN POLICE STATION,
PUDUKKOTTAI.

7 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

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

+1 CC to M/s.E.SOMASUNDARAM, Advocate (SR-355[I] dated 21/01/2021)

ORDER

IN

CRL.MP.(MD) Nos.6715 & 6720 of 2020

IN

CRL A.(MD) Nos.116 & 115 of 2020

Date :20/01/2021

krk

JM/VR/SAR II/29.01.2021/5P/10C