



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

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

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PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP (MD) No.6510 of 2020
IN
CRL A (MD) No.241 of 2020

1.VINISH
2.SANTHOSH

... PETITIONERS/APPELLANTS/
ACCUSED -2 and 3

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
KUMULI POLICE STATION,
THENI DISTRICT.
CRIME NO.43 OF 2014.

... RESPONDENT/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 in S.C.No.95 of 2016 dated 14.02.2020 by Learned Additional District and Sessions Judge (FTC) Theni and enlarge the petitioners on bail pending disposal of main criminal appeal and thus render justice.

PRAYER IN CRL A(MD) No.241 of 2020:

Pleased to set aside the conviction and sentence passed in S.C.No.95 of 2016 dated 14.02.2020 by the learned Additional District and Sessions Judge (FTC), Theni.

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.RAVI, Advocate for Mr.K.MUTHU GANESA PANDIAN, Advocate for the petitioners 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 K.KALYANASUNDARAM, J.]

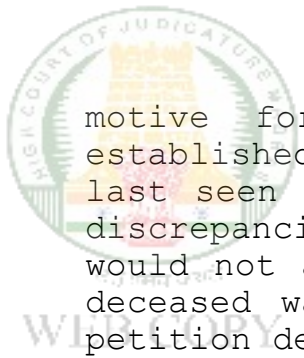
Totally three accused were tried by the Additional District and Sessions Judge (FTC) Theni in S.C.No.95 of 2016 for the offences punishable under Section 302 r/w Section 34 of IPC. All the three accused were convicted for the said charges and they were sentenced to undergo life imprisonment with fine of Rs.5,000/-.

2.Challenging the conviction and sentence, A2 and A3 in that case have preferred this appeal. Pending appeal, this application to suspend the sentence of imprisonment has been filed.

3. The case of the prosecution is that the accused Nos.2 & 3 are the friends of the first accused. P.Ws.1 & 2 are the parents and P.W.3 is the sister of the deceased Rajesh Kannan. It is the case of the prosecution that the first accused had developed intimacy with P.W.3, namely, Rajeswari, who is the daughter of P.Ws.1 & 2 and sister of the deceased and the said affair was opposed by the deceased. Annoyed over the action of the deceased, the first accused conniving with other two accused took the deceased in an auto bearing registration No.KL-37-B-3917 on 03.08.2014 at 12.00 noon and pushed him down from a rock with depth of 3000 feet and thereby caused his death.

4. Mr.S.Ravi, learned counsel appearing for the petitioners would urge that the prosecution relies on the circumstantial evidence to establish the charges against the accused, but the circumstances relied on by the prosecution have not been proved. He would further submit that for the occurrence that is said to have taken place on 03.08.2014, the father of the deceased preferred a complaint only on 15.08.2014 that too before the Vannaarmadai Police Station in the State of Kerala. After identifying the body, a second complaint was given to the respondent police on 16.08.2014. He would add that the complaint was preferred to Vannaarmadai Police Station has been suppressed deliberately by the prosecution. In the second complaint, P.W.1 has stated that P.Ws.4 & 9 accompanied the accused and the deceased at the time of occurrence and their names also have been mentioned. But in the cross-examination, he admitted that he did not know P.Ws.4 & 9. In the same line, P.W.2 has also given evidence and this material contradictions would show that P.Ws.4 & 9 have been planted by the prosecution to prove the charge. In view of the flaw in the case of the prosecution, the petitioners are entitled for suspension of sentence. It is also submitted that the evidences of P.Ws.4 & 9 are artificial and untrustworthy.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor vehemently opposed the petition contending that the



motive for commission of the offence has been categorically established by testimony of P.Ws.1 to 3. It is also stated that the last seen theory has been proved through P.Ws.4 & 9 and the minor discrepancies pointed out by the learned counsel for the petitioners would not affect the prosecution case. It is also stated that the deceased was done to death in a cruel manner and therefore, this petition deserves to be rejected.

6. In the matter on hand, admittedly, there is no eye witness to the incident and the prosecution has relied upon circumstantial evidence to prove their case. From the available materials, we could see that there are arguable points available in this case. Further, the main appeal is not likely to be taken up for hearing in the near future. So we are inclined to grant an order in favour of the petitioners. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on 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, Uthamapalayam.

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.

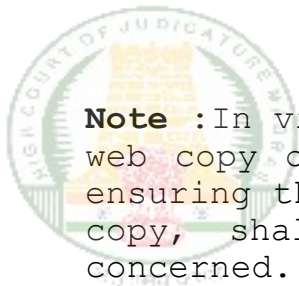
iii. The petitioners shall stay at Trichy and report before the Judicial Magistrate No.II, Trichy, on all working day at 10.30 a.m., until further orders.

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 said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

sd/-
27/01/2021

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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.

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TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTC),
THENI.
2. THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
4. THE JUDICIAL MAGISTRATE No. II,
TRICHY.
5. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
6. THE INSPECTOR OF POLICE,
KUMULI POLICE STATION,
THENI DISTRICT.
7. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
8. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.6510 of 2020
IN
CRL A (MD) No.241 of 2020
Date : 27/01/2021

AM
TK/VR/SAR.2/01.02.2021/4P/9C