



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

Wednesday, the Seventeenth day of March 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.6506 of 2020
IN
CRL A(MD) No.281 of 2020

PANDI

... PETITIONER/ APPELLANT/
ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
RAJATHANI POLICE STATION,
THENI DISTRICT.
CRIME NO.16 OF 2017

... 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** and granting bail in S.C.No.166 of 2017 on the file of Learned Additional District and Sessions Judge(FTC), Theni, Theni District dated 03.03.2020 till the disposal of the criminal appeal.

PRAYER IN CRL A(MD) No.281 of 2020:

To call for the records from the Lower Court and duly set aside the judgment passed by the learned Additional District and Sessions Judge(FTC), Theni, Theni District in S.C.No.166 of 2017 dated 03.03.2020 and acquitt 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.BALAJI, Advocate for the petitioner and of Mr.R.ANANDHRAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

This petition has been filed by the Petitioner/appellant/A2 seeking to suspend the sentence and granting bail in S.C.No.166 of 2017, on
<https://hcservices.ecourts.gov.in/hcservices/>



the file of the learned Additional District and Sessions Judge (FTC), Theni, Theni District, dated 03.03.2020, till the disposal of the Criminal Appeal.

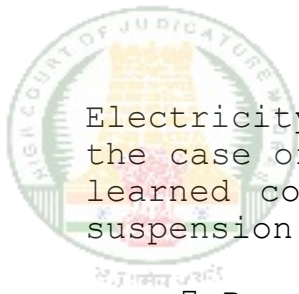
2. In this case, totally there are 10 accused. A2 and A9, who were convicted by the Additional District and Sessions Judge (FTC), Theni District in S.C.No.166 of 2017 for the offences punishable under Sections 147, 148, 302 of IPC have preferred this appeal. Pending appeal, in this petition, the second accused seeks suspension of sentence.

3. The case of the prosecution is that on 15.1.2017, i.e., on the day of Mattu Pongal, Reckla Race was conducted in the village of Theppampatti, where, dispute arose between the deceased and the accused party. Thereafter, all the accused armed with stones, sticks and wooden logs had gone to the house of the deceased at 8.30 p.m. and scolded and they were pacified and thereafter, at 9.30 p.m, when the deceased had gone to a shop to fetch Beedi, he was brutally attacked by the accused party and thereby, the deceased died on the spot.

4. In order to prove the prosecution case, P.W.1 to P.W.23 were examined and Exs.P1 to P25 and M.O.1 to M.O.6 were marked. The trial Court, on the basis of the evidence adduced by the prosecution, convicted the accused A1, A2 and A7 to A9, while acquitting the remaining accused A3 to A6 and A10.

5. Mr.S.Balaji, learned counsel appearing on behalf of the petitioner would submit that in the First Information Report, it is stated that 11 named accused and others have caused injuries on the deceased, but charge sheet was laid only against 10 accused persons. The trial Court, has not totally believed and relied upon the evidence of eye-witnesses P.W.1 to P.W.6, but, applying the **Masalti's Rule** convicted the accused. It is further submitted that the name of P.Ws.3 and 6 have not been found place in the First Information Report and the entire evidence of the alleged eye-witnesses are very vague and they did not speak about the overt-acts attributed against the accused. He drew the attention of this Court to the evidence of P.Ws 1 to 3 to substantiate the said contention.

6. It is further urged by the learned counsel that the post-mortem Doctor P.W.17 found the deceased consumed alcohol and the injuries noted at the time of post-mortem did not tally with the evidence of the ocular witnesses. He further added that though the occurrence had taken place on 15.1.2017 at 9.30 p.m and the case came to be registered at 23.30 hours, but the express FIR reached the Court only on 16.1.2017 at 11.05 a.m. Lastly, it is submitted that admittedly, the occurrence had taken place during the night hours, but, no witnesses speak about the availability of the light in the place of occurrence and on the contrary, the staff from the



Electricity Board, who was examined as P.W.15, also did not support the case of the prosecution and in the light of the above facts, the learned counsel prays for allowing the application filed seeking suspension of sentence.

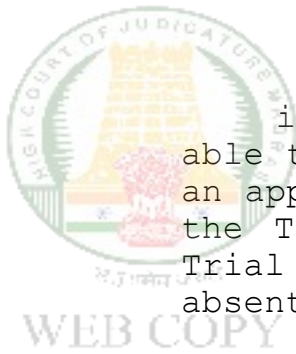
7.Per contra, Mr.R.Anandhraj, learned Additional Public Prosecutor would submit that P.W.1 to P.W.3 and P.W.6 have categorically deposed before the trial Court with regard to the dispute ensured between the parties on the date of Pongal Festival and the attack made by the accused on the deceased. He further submitted that P.W.20 in his Chief-examination itself, has explained the reason for delay in reaching the First Information Report to the Court. According to the learned Additional Public Prosecutor, the Post-mortem Doctor P.W.17 has clearly stated that the death was due to the attack made by the accused with stones and sticks. It is the contention of the learned Additional Public Prosecutor that P.Ws.1 to 3 have clearly spoken about the overtact against the second accused.

8.In the matter on hand, a perusal of the First Information Report would show that the criminal case in Cr.No.16 of 2017 was registered on the file of the respondent, in which, it has been clearly stated that the offence was committed by 11 named accused and other accused. However, the final report was laid only against 10 accused persons. The trial Court, after considering the evidence produced by the prosecution, disbelieved the story of recovery of weapons in pursuance of the confession made by the accused persons. Indisputably, names of P.W.3 and P.W.6, who were said to have witnessed the crime, are not mentioned in the First Information Report. It is further seen that the evidence of P.W.1 to P.W.3 and P.W.6 are vague and there is no reference about the overt-acts against each of the accused, either in the First Information Report or in their evidence.

9.In the light of the above facts, we are of the opinion that the petitioner/A2 is entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner/A2 is suspended, subject to the following conditions:

i. The petitioner/A2 is directed to be enlarged on bail on his executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the Judicial Magistrate, Aundipatty.

ii. The petitioner shall appear before the learned Judicial Magistrate Aundipatty, 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 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
17/03/2021

/ TRUE COPY /

/ /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 ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTC),
THENI, THENI DISTRICT.

2 THE JUDICIAL MAGISTRATE, AUNDIPATTY.

3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE,
RAJATHANI POLICE STATION, THENI DISTRICT.

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

+1 CC to M/s.S.BALAJI, Advocate (SR-2199[I] dated 17/03/2021)

ORDER
IN
CRL MP(MD) No.6506 of 2020
IN
CRL A(MD) No.281 of 2020
Date :17/03/2021

SKN
MS/PN/SAR-2/19.03.2021/4P.8C

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