



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

Friday, the Twenty Second 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.7209 of 2020

IN

CRL A(MD) No.369 of 2020

1 JAKKAMMA @ JEBAKUMAR

2 LAKSHMANAN

3 DHARMARAJ

4 BENJAMIN

... PETITIONERS/APPELLANTS NO.1 TO 4

Vs

STATE REP.BY

THE INSPECTOR OF POLICE,

NANGUNERI POLICE STATION,

TIRUNELVELI DISTRICT.

CRIME NO.95 OF 2016.

... 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 in conviction made in the Judgment passed by the IV Additional Sessions Judge, Tirunelveli in SC.No. 765 of 2016 dated 13.10.2020.

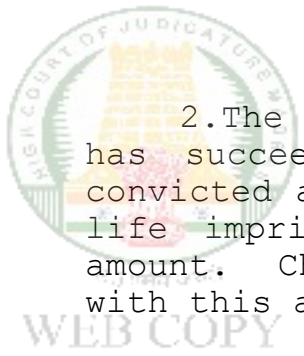
Prayer in CRL A(MD) No.369 of 2020:

To admit this appeal on file, to call for the records from the Lower Court and to duly set aside the judgment passed by the Learned IVth Additional District Judge, Tirunelveli District in S.C.No.765/2016 dated 13.10.2020.

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.V.SORIMUTHU, 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.]

The petitioners herein were tried by the IV Additional Sessions Judge, Tirunelveli in S.C.No.765 of 2016 for the commission of offence punishable under Sections 120(b)(1), 341, 294(b), 302 of IPC.



2. The learned trial Judge, having found that the prosecution has succeeded in establishing the charges against the accused, convicted all of them for the charges and sentenced them to undergo life imprisonment with other sentences and also imposed a fine amount. Challenging the conviction and sentence, they have come up with this appeal. Pending appeal, they seek suspension of sentence.

3. The case of the prosecution is that the accused Nos.1,3 & 4 are brothers and A2 is their maternal uncle. A1 was working at Erode, while his family members reside at his native place, namely, Kalunkadi. It is alleged that one Johnson was found in the house of A1, when his wife was staying alone on 14.04.2016. The deceased Sathirakutty along with his four other friends locked the door from outside, when the said Johnson was in house along with Angelin and opened the door after one hour. The said incident was informed to the first accused by his brother A2. Annoyed over the said act, A1 conspired with A2 to A4, to eliminate the deceased and in pursuance thereof at 7.15 a.m., on 14.04.2016 all the accused way-laid the deceased when he was going on a bi-cycle and the first accused assaulted him with M.O.1-Veecharuval.

4. The learned counsel appearing for the petitioners would submit that the prosecution has not come to the Court with clean hands and the statement obtained from P.W.1 has been suppressed and the case was registered based on the second complaint obtained from P.W.1. It is further urged by the learned counsel for the petitioners that P.W.1, who is the brother of the deceased, has not mentioned about the presence of P.Ws.2 & 3 in the statement given to the police under Section 161 Cr.P.C., and in the complaint, which culminated in FIR. It is further submitted that P.W.2 has also admitted that he did not see P.W.1 at the time of occurrence. He further added that as per the prosecution, occurrence had taken place at 7.15 a.m., on 14.04.2016 and the case was registered based on the complaint of P.W.1 at 09.00 a.m. In the course of evidence, P.W.1 has categorically admitted the presence of police in the scene of occurrence at 7.30 a.m., and also stated he lodged a complaint at 8.30 a.m., and the body was removed at 08.00 a.m., from the scene of occurrence, but P.W.15, the investigating officer has stated that he conducted inquest on the dead body between 13 hours to 15 hours. It is also stated that P.W.5 has stated that the confession given by the accused was written by the investigating officer, but what was produced by the police is the typed copy. In view of the infirmities in the evidence, the petitioners are entitled for suspension of sentence.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor would argue that P.Ws.1,2 & 3 have been examined as eye witnesses to the incident and they have categorically deposed about the motive and the parts played by the accused in the incident. It is also contended that for the occurrence which took place at 7.15 a.m., on 14.04.2016, the case came to be registered at 09.00 a.m., and FIR also



reached to the Magistrate Court by 10.30 a.m., on the same day and there is no delay in lodging the FIR nor it reaching the Court. According to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubt and therefore, the accused are not entitled for suspension of sentence.

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6. We have heard the rival submissions made by both sides and perused the materials available on record.

7. In the instant case, a perusal of evidence of P.Ws.1,2 & 3 would reveal that the presence of P.Ws.2 & 3 has not been mentioned in the FIR nor in the statement recorded under Section 161 Cr.P.C. P.W.1 has also admitted in his evidence that he lodged a complaint to the police in the scene of occurrence itself at 8.30 a.m., but P.W.14 would state that on the basis of the complaint preferred by P.W.1 in the police station, he registered a case. The eye witnesses also stated that the fatal injuries were inflicted by A1, while other accused have detained the deceased in the place of occurrence.

8. Considering the overt-act attributed against A1, this Court is not inclined to grant suspension of sentence for A1 and this application is dismissed insofar as A1/first petitioner is concerned.

9. Further, considering the overt-act attributed against the accused Nos.2 to 4 and the arguments advanced by the learned counsel for the petitioners, we are of the opinion that the A2 to A4 are 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 petitioners 2 to 4 alone is suspended, subject to the following conditions:

i. The petitioners 2 to 4 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, Nanguneri.

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 2 to 4 shall stay at Poonthamalli and report before the Judicial Magistrate No.II, Poonthamalli, daily at 10.30 a.m., until further orders.

iv. On any particular date, if the petitioners 2 to 4 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/-
22/01/2021

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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 THE IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI.
- 2 THE JUDICIAL MAGISTRATE,
NANGUNERI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
- 4 THE JUDICIAL MAGISTRATE NO.II,
POONTHAMALLI.
- 5 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUVALLUR.
- 6 THE INSPECTOR OF POLICE,
NANGUNERI POLICE STATION,
TIRUNELVELI DISTRICT.
- 7 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 8 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.7209 of 2020
IN
CRL A(MD) No.369 of 2020
Date :22/01/2021

am
JM/VR/SAR II/01.02.2021/4P/9C