



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

Friday, the Eighth day of January Two Thousand and Twenty One

PRESENT

WEB COPY

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

CRL MP(MD) No.6833 of 2020
IN
CRL A(MD) No.253 of 2020

SIVAPANDI

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
AUNDIPATTY POLICE STATION,
THENI DISTRICT.
CRIME NO.552/2009

... RESPONDENT/RESPONDENT

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 on the petitioner in S.C.No.63 of 2016 dated 21.02.2020 on the file of the Additional District and Sessions Judge (FTC), Theni, pending disposal of the above CRL A(MD)No.253/2020 and thus render justice.

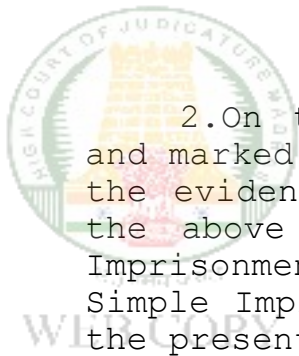
PRAYER IN CRL A(MD) No.253 of 2020:

Pleased to set aside the judgment and sentence passed in Sessions Case No.63/2016 dated 21.02.2020 on the file of the Additional District and Sessions Judge(FTC), Theni, convicting the appellant for the offence under section 302 of IPC and sentenced to undergo life imprisonment and imposed a fine of Rs.5000/- in default to undergo a simple imprisonment for one year.

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.ILLANCHEZIAN, Advocate for the petitioner 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 petitioner was tried by the Additional District and Sessions Judge (FTC), Theni in S.C.No.63 of 2016 for an offence under Section 302 of IPC. It is alleged that on 11.09.2009 at 5.20 p.m., the accused inflicted fatal injuries on the deceased Ranjithkumar.



2. On trial, the prosecution examined as many as 21 witnesses and marked Ex.P1 to Ex.P14 and M.Os.1 to 8. The trial Court based on the evidence adduced by the prosecution, convicted the accused for the above stated charge and imposed a sentence to undergo Life Imprisonment with a fine of Rs.5,000/- in default to undergo one year Simple Imprisonment. Challenging the said conviction and sentence, the present appeal has been filed. Pending appeal, this application to suspend the sentence of imprisonment has been filed.

3. The case of the prosecution is that, the accused and the deceased were friends. On 11.09.2009 while they were playing cards with the witnesses, the deceased intervened and giving instructions for discard the cards, which was being objected by the accused, but the deceased retorted that he will continuing to do so. Therefore, a wordy quarrel arose between them. The further case of the petitioner is that annoyed over the abusive words uttered by the deceased, at 5.20 p.m., on 11.09.2009, the petitioner purchased a knife and when the deceased was standing near Muthalamman Temple, both of them decided to go to a burial ground to show their strength, and later the accused said to have caused injuries on the left side of the chest and right side of the hip of the deceased and thereby, he died.

4. The prosecution cited P.Ws.1 to 4 as witnesses to the occurrence, but they have turned hostile. The learned Trial Judge taking note of the fact that the accused had taken 6 ½ months to cross-examine P.Ws.1 & 2, based on their testimony in chief-examination chose to convict the accused.

5. Mr. V. Illanchezian, learned counsel appearing for the petitioner would argue that though P.Ws.1 & 2 have supported the case of the prosecution in their chief-examination, but during the cross-examination they have turned hostile. According to the learned counsel for the petitioner, the delay of six months occurred only because of the reason that the counsel engaged by the accused did not cross-examine the witnesses and cross-examination was conducted by the counsel appointed by the Legal Services Authority and hence, the delay in cross-examination cannot be put against the petitioner. He would further add that P.Ws.1 & 2 gave a statement before the learned Judicial Magistrate on 29.09.2009 and in their statements under Section 164 Cr.P.C., P.W.1 has stated that he has not only taken the deceased in an auto-rickshaw, but also the accused directly to the police station and after handing over the accused to the Investigating Officer, he took the deceased to the hospital. Therefore, the arrest of the accused on 14.09.2009 and on the basis of the confession of the accused, recovery of the weapons, are false.

6. It is also submitted that two other accused were involved in the commission of the offence, but the Investigating Officer have <https://hccs.cesrtds.gov.in/home> and filed a final report only against the



petitioner/accused and according to him, there are some arguable points available in this case.

7. Per contra, Mr.R.Anandaraj, learned Additional Public Prosecutor would argue that the motive for the commission of offence and the overt-act attributed against the petitioner has been categorically proved by the prosecution before the Trial Court. The delay in cross-examining the witnesses has also been taken into consideration to place reliance on the evidence of P.Ws.1 & 2 and hence, the petitioner is not entitled to suspension of sentence.

8.In the matter on hand, the prosecution story is that on 11.09.2009 at about 2.30 p.m., a wordy quarrel ensued between the accused and the deceased while playing cards and in pursuance thereof at about 5.20 p.m., the accused is said to have attacked the deceased with knife and caused fatal injuries. Admittedly, P.Ws.1 & 2 are father and son of the deceased and P.Ws.3 & 4 are the relatives. It is to be noted that P.Ws.1 & 2 though supported the case of the prosecution in the chief-examination, however, turned hostile during the cross-examination. P.Ws.3 & 4 even in the chief-examination have pleaded ignorance about the occurrence. A perusal of evidence of P.Ws.1 & 2 would show that in the statement under Section 164 Cr.P.C., P.W.1 has stated that immediately after the occurrence, he took the accused to the police station along with deceased and after handing over the accused to the police, he carried his deceased son to the hospital. Therefore, the accused was arrested on 14.09.2009 and in pursuance of the confession, recovery of knife was made, creates serious doubt over the prosecution case.

9.In the light of the above evidence available on record, we are of the opinion that the accused 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 alone is suspended, subject to the following conditions:

i. The petitioner is 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, Aundipatti.

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 petitioner shall stay at Sivagangai and appear before the Judicial Magistrate No.II, Sivagangai on all working days until further orders.

