



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

Friday, the Twenty Second day of October Two Thousand and Twenty One
PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice S.ANANTHI

Crl.M.P. (MD)No.7914 of 2021
in
Crl.A. (MD).No.67 of 2020

KALIDASS

... PETITIONER/ APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
KAYATHAR POLICE STATION, KAYATHAR,
THOOTHUKUDI DISTRICT
(CRIME NO.300 OF 2017)

... 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 by the learned 1st Additional District and Session Judge, Thoothukudi in S.C.No.28 of 2018 by the judgement dated 09/01/2020 and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in Crl.A.(MD).No.67 of 2020:

To allow this appeal and set aside the judgment and conviction dated 09.01.2020 passed by the learned 1st Additional District and Session Judge, Thoothukudi in S.C.No.28 of 2018 and acquit 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.N.PRAGALATHAN, Advocate for the petitioner and of MR.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by V.BHARATHIDASAN.,J)

The petitioner / appellant is the sole accused in S.C.No.28 of 2018, on the file of the learned I Additional District and Sessions Judge, Thoothukudi. The petitioner was found guilty for the offence under Section 302 IPC. The trial Court sentenced him to undergo life imprisonment for the offence under Section 302 IPC., and to pay a fine of Rs.5000/-, in default, to undergo rigorous imprisonment for two years. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of



2. The case of the prosecution is that the deceased in this case is one Pandi. The accused and deceased are belongs to same village. Earlier, the accused fell in love with brother's daughter of the deceased. However, alleging that at the instigation of the deceased, the parents of the girl refused to give her for marriage to the accused. Hence, there was an enmity between them. On the date of occurrence i.e., on 11.08.2017, while the deceased opening the valve in the overhead water tank, the accused thrown a stone on the head of the deceased and he fell down. Once again, the accused attacked the deceased with stone on his face and caused serious injuries. Immediately, the deceased was taken to a private hospital where he was referred to the Government Hospital and on the way to the Government Hospital, he succumbed to the injuries. P.W.1, the son of the deceased has given a complaint. P.W.1 to P.W.3 are the eyewitnesses to the occurrence.

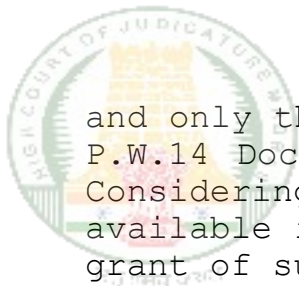
3. The trial Court, after considering the materials, convicted and sentenced the accused as above. Challenging the same, the petitioner has filed the present appeal, and pending appeal, he seeks suspension of sentence.

4. The learned counsel appearing for the petitioner would submit that P.W.1 to P.W.3 are the chance witnesses and there is no occasion for them to present in the scene of occurrence. Even as per the evidence of P.W.2, he was alone present in the scene of occurrence. That apart, as per the complaint of P.W.1, the deceased was taken to a private hospital where he declared dead, however, as per the evidence of P.W.14 Doctor, working in the private hospital stated that, while the deceased was taken to the hospital, he was alive and he was already given treatment by some other hospital, then, he referred to the Government Hospital. That apart, the occurrence had taken place due to wordy quarrel between the parties, at any rate, he cannot be convicted under Section 302 IPC.

5. Mr.S.Ravi, the learned Additional Public Prosecutor appearing for the State would submit that there are three eyewitnesses to the occurrence, out of which, P.W.2 is an independent witness. All the three witnesses have consistently stated that only the accused has put a big stone on the head of the deceased and caused his death and the trial Court considering all those materials rightly convicted the accused and opposed the application.

6. We have considered the rival submissions made and perused the materials available on record.

7. There are three eyewitnesses to the occurrence viz., P.W1 to P.W.3, out of which, P.W.1 and P.W.3 are closely related to the deceased. P.W. 2 is the villager and as per his evidence, at the



and only thereafter, P.W.1 and P.W.3 came to the scene. That apart, P.W.14 Doctor's evidence also contradict to the evidence of P.W.1. Considering those circumstances, we find that, arguable points are available in the appeal and a prima facie case has been made out for grant of suspension of sentence.

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8. 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 a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like-sum to the satisfaction of the learned I Additional District and Sessions Judge, Thoothukudi.

ii. The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., 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 of 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/-

22/10/2021

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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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI.

2 THE INSPECTOR OF POLICE
KAYATHAR POLICE STATION, KAYATHAR

<https://hcservice.courtindia.org/> DISTRICT.



3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

+1 CC to Mr.N.PRAGALATHAN, Advocate (SR-7301[I] dated 22/10/2021)

ORDER

IN

Crl.M.P.(MD)No.7914 of 2021

in

Crl.A.(MD).No.67 of 2020

Date :22/10/2021

MPK

MK/SKN/SAR.III/22.10.2021/4P/6C