



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

Friday, the Twenty Ninth 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.7796 of 2020

IN

CRL A(MD) No.386 of 2020

1 MANIKANDAN

2 AJMEERKHAN

... PETITIONERS/APPELLANTS

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
THIRUMANGALAM TALUK POLICE STATION,
THIRUMANGALAM,
MADURAI DISTRICT.

... 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 of Imprisonment imposed by the learned 4th Additional District and Sessions Judge, Madurai in S.C.No.508 of 2016, dated 14.10.2020 and enlarge the petitioners/accused No.1 and 3 on bail, pending disposal of above Criminal Appeal.

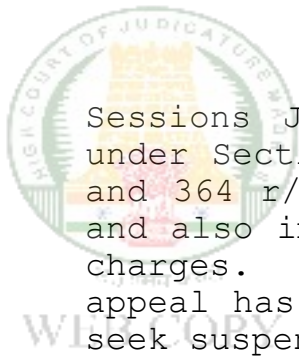
Prayer in CRL A(MD) No.386 of 2020:

To call for the records and set aside the judgment and conviction dated 14.10.2020 passed by the learned 4th Additional District & Sessions Judge, Madurai in S.C.No.508 of 2016 and acquit the Appellants.

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.G.KARUPPASAMY PANDIAN, Advocate for the petitioners 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, 5 accused were tried before the IV Additional District Judge, Madurai in S.C.No.508 of 2016 for the offences punishable under Sections 109 r/w 302 IPC, 120(b) r/w 302 IPC, 341 r/w 34 IPC, 302 r/w 302 IPC and 364 r/w 34 IPC. After trial, the learned



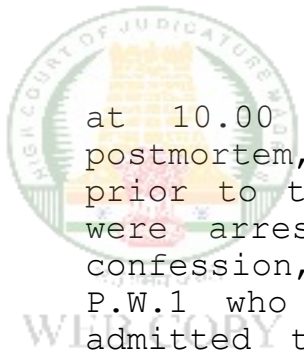
Sessions Judge convicted the accused 1, 3 and 4 for the charges under Sections 120(b) r/w 302 IPC, 341 r/w 34 IPC, 302 r/w 34 IPC and 364 r/w 34 IPC and sentenced them to undergo life imprisonment and also imposed fine. Accused 2 and 5 were acquitted from all the charges. Challenging the conviction and sentence, the present appeal has been filed by the accused 1 and 3. Pending appeal, they seek suspension of sentence.

2.The case of the prosecution is that the deceased Ramanathan @ Ranjith is the son of P.W.1 and brother of P.W.2. A5 is the wife of the deceased. A1 is the son of A2 and A3 and A4 are the friends of A1. It is the further case of the prosecution that A1 developed illicit intimacy with A5, which was objected by the deceased Ramanathan @ Ranjith. While so, on 18.11.2015 at about 03.30 p.m, A1 and A5 conspired with other accused to eliminate the deceased. In pursuance thereof, on 22.11.2015 at 10.00 p.m, when the deceased was riding his motorcycle near Pandian Nagar Railway Gate, A1 to A4 intercepted him and A1 attacked the deceased with iron rod. A2 caught-hold of the deceased and A3 and A4 strangled the deceased and thereafter, the deceased was taken in a TATA ACE bearing reg.No.TN-58-Z-6333 along with his motorcycle and they disposed the body at Vadakarrai Colony Oorani. The incident is said to have been witnessed by P.W.1 to P.W.3.

3.Before the Trial Court, in order to establish the charges against the accused, the prosecution examined 20 witnesses and produced 28 documents as exhibits and marked 13 documents as material objects. The trial Court on appreciation of evidence held that the prosecution has proved the charges against A1, A3 and A4 and convicted and sentenced them as stated supra.

4.The learned counsel for the petitioner Mr.G.Karuppasamy Pandian would argue that though the prosecution cited P.W.1 to P.W.3 as eyewitnesses to the occurrence, P.W.3 did not support the case of the prosecution and he was treated as hostile. It is also contended that P.Ws.1 and 2 would not have been present in the scene of occurrence and their evidence is untrustworthy. He further added that P.W.1 has lodged complaint (Ex.P.1) and the same was registered by P.W.19, Sub-Inspector of Police. Though the occurrence is said to have taken place at 10.00 p.m on 22.11.2015, the complaint was lodged only at 13.00 hours on 23.11.2015. According to the learned counsel, no explanation has been offered by the prosecution for lodging of the complaint belatedly. It is also contended that if the P.W.1 and P.W.2 had seen the occurrence as per prosecution, there was no necessity for the Investigating Officer to seek assistance of the sniffer dog lifting the finger prints from the material objects.

5.It is further submitted that the evidence of P.W.6, who is a scavenger would show that he saw the body at 07.30 a.m on 23.11.2015 as per prosecution, the occurrence had taken place



at 10.00 p.m on 22.11.2015. P.W.12, Doctor, who conducted postmortem, also stated that the deceased would have died three days prior to the occurrence. Further as per prosecution, the accused were arrested at 01.30 p.m on 24.11.2015 and based on their confession, the motorcycle used by the deceased was recovered. But P.W.1 who is the father of the deceased, in his evidence has admitted that he saw the motorcycle at the police station on 23.11.2015. It is the submission of the learned counsel that the entire prosecution story is unbelievable.

6.Per contra, the learned Additional Public Prosecutor Mr.R.Anandharaj opposed the application contending that the prosecution succeeded in proving the case through eyewitnesses P.W.1 and P.W.2. It is further submitted that the prosecution has proved charges against the petitioners beyond reasonable doubt and hence, they are not entitled for suspension of sentence and he prayed for dismissal of the petition.

7.In the matter on hand, it is the case of the prosecution that the occurrence had taken place at 10.00 p.m on 22.11.2015. Admittedly, the complaint was preferred only at 01.00 p.m on 23.11.2015 i.e., with the delay of 15 hours. The evidence of P.W.1 and P.W.2 would show that they saw the incident at 10.00 p.m at 22.11.2015, in which the deceased was assaulted with iron rod and after body was taken by the accused in TATA ACE vehicle, they searched some time and thereafter, they went to their house and after sleeping over night, they started to search the deceased only at 08.30 a.m at 23.11.2015. This conduct of P.W.1 and P.W.2 is unnatural. If the witnesses saw the occurrence, in the natural course, they would have given complaint on the same day night. Further, the Investigating Officer has admitted in his evidence that sniffer dog was pressed into service and they also lifted finger print from the TATA ACE vehicle.

8.From the above arguments of the learned counsel for the petitioner, we could see that there are arguable points available to the accused in this case. Therefore, we are of the opinion that the petitioners 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 is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on each of them 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, Thirumangalam.

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

<https://hcservices.honk.gov.in/hcservices> are their identity.



iii. The petitioners shall stay at Salem and appear before the Judicial Magistrate No.II, Salem daily 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 Judicial Magistrate No.II, Salem on any other day, as determined by the said Court, in lieu of the day on which they would absent.

sd/-

29/01/2021

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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 DISTRICT AND SESSIONS JUDGE,
MADURAI.
- 2 THE JUDICIAL MAGISTRATE, THIRUMANGALAM.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 4 THE JUDICIAL MAGISTRATE NO.II, SALEM.
- 5 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SALEM.
- 6 THE INSPECTOR OF POLICE
THIRUMANGALAM TALUK POLICE STATION,
THIRUMANGALAM, MADURAI 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.7796 of 2020

IN

CRL A(MD) No.386 of 2020

Date :29/01/2021

SKN

JM/VR/SAR III/05.02.2021/4P/9C

<https://hcservices.ecourts.gov.in/hcservices/>