



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

Thursday, the Tenth day of June 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.7728 of 2020
IN
CRL A(MD) No.477 of 2019

1 REGI
2 SHAJI

... APPELLANTS/ ACCUSED 1 AND 2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO.453 OF 2014

... 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 made in S.C.No.112 of 2015 dated 27.08.2019 on the file of the Additional District and Sessions Judge, (Fast Track Court)Nagercoil and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

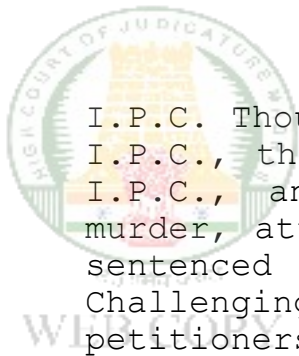
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.V.BASKARAN, Advocate for the Petitioners and Mr.S.Ravi, Standing Counsel for Government of Tamil Nadu on behalf of the Respondent, the Court made the following order:-

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

This criminal miscellaneous petition has been filed by the petitioners/appellants (A1 & A2) seeking to suspend the substantive sentence of imprisonment imposed on them by the learned Additional District and Sessions Judge, (Fast Track Court), Nagercoil, by judgment dated 27.08.2019 in S.C.No.112 of 2015.

2. The petitioners herein were tried along with one Ajitha for the offences under Sections 341, 294(b), 302 r/w. 34 and 307 of

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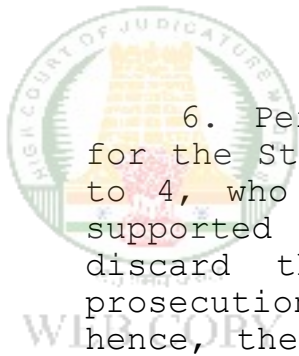


I.P.C. Though all the accused were acquitted under Section 294(b) of I.P.C., the third accused was also acquitted under Section 307 of I.P.C., and the petitioners were convicted for the charges of murder, attempt to murder and wrongful restraining the deceased and sentenced to suffer various sentence including life imprisonment. Challenging the said conviction and sentence, A1 and A2, the petitioners herein have preferred the above appeal, while A3 filed separate appeal in CrI.A.(MD).No.462 of 2019. The petitioners, who were arrayed as A1 and A2, have filed this application to suspend the sentence.

3. The case of the prosecution is that A1 and A2 are brothers and A3 is the wife of the first accused. P.W.1 is the wife of Rajan. It is alleged that on 29.06.2014 at 10.00 a.m., A1 and A2 teased P.W.1 by using some vulgar language. The same was informed by P.W.1 to her husband Rajan and his brother Vijayakumar, which was questioned by the deceased and the said Vijayakumar on 29.06.2014, at 6.45 p.m. Enraged over the act of the deceased and Vijayakumar, on 05.07.2014, at 6.45 p.m., all the accused have joined together and assaulted the deceased with knife, stick and stone, thereby caused his death. In the same incident, P.W.2 has sustained injuries.

4. The prosecution, to prove the charges against the accused, had let in oral and documentary evidence. After analysing the evidence adduced by the prosecution, the trial Court found that the charges against the accused have been proved and convicted and sentenced them as mentioned above.

5. The learned counsel appearing for the petitioner would argue that though the occurrence is said to have taken place on 05.07.2014, at 6.45 p.m., the case was registered only on 11.30 p.m. The delay in lodging the complaint has not been properly explained by the prosecution. It is next contended that P.W.3, who is an independent witness, has categorically admitted that the police obtained his statement at 8.00 p.m., but the complaint given by P.W.3 has not been produced by the prosecution. According to the learned counsel, the prosecution has not come to the Court with clean hands and the origin and genuineness of the occurrence has been deliberately suppressed by the prosecution. In this regard, the learned counsel has stated that the second accused had admittedly received injuries and the complaint preferred by the second accused was not at all registered and investigated by the respondent police. The non-registration of the complaint preferred by the second accused and their failure to produce the records would go to the root of the case. It is his submission that the third accused was granted bail by this Court in CrI.M.P.(MD).No.8597 of 2019, on 26.11.2019 and hence, the petitioners are entitled for suspension of sentence pending appeal.



6. Per contra, Mr.S.Ravi, learned Standing counsel appearing for the State would submit that the prosecution has examined P.Ws.1 to 4, who have witnessed the incident and all the witnesses have supported the case of the prosecution and there is no reason to discard their evidence. The other materials produced by the prosecution have corroborated the evidence of the eyewitnesses and hence, the petitioners are not entitled for suspension of sentence in this petition.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. It is an admitted fact that the occurrence had taken place on 05.07.2014 at 6.45 p.m. P.W.13, the Sub Inspector of Police, who registered the F.I.R. / Ex.P1 has categorically admitted that the second accused, who sustained injury in the same occurrence, was admitted in Ramakrishna Hospital, Marthandam and he preferred a complaint, but it was not registered, since he came to know that when accused No.1 assaulted the deceased, it accidentally fell on accused No.2. It is also seen that the deceased was in inebriate mood and the same was proved through the evidence of P.W.11, Dr.Ramcharan, who conducted the postmortem on the dead body of the deceased. P.W.10, Doctor Chandrasekaran, in his evidence admitted that the second accused had sustained grievous injuries. It is settled legal principle that the prosecution has to explain the injuries sustained by the accused in the same transaction, in which the deceased was murdered. In the present case, it is an admitted fact that the second accused had sustained injuries, but no material has been placed before the trial Court to show as to how injuries were caused to the second accused. It is seen that the petitioners are in judicial custody for about two years and we find some arguable points in the appeal and further the appeal is not likely to be taken up for final disposal in near future.

9. Considering the above aspects, we are inclined to grant 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 alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) each with two sureties, of whom, one should be a blood-related surety, each for a like sum to the satisfaction of the Judicial Magistrate No.I, Kuzhithurai.

ii. The petitioners shall appear before the learned Judicial Magistrate No.I, Kuzhithurai 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 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 Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

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10/06/2021

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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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FAST TRACK COURT), NAGERCOIL.
2. THE JUDICIAL MAGISTRATE NO.I,
KUZHITHURAI.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI AT NAGERCOIL.
4. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYANKOTTAI.
5. THE INSPECTOR OF POLICE,
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to Mr.V.BASKARAN, Advocate SR.No.3933

ORDER IN
CRL MP(MD) No.7728 of 2020
IN CRL A(MD) No.477 of 2019
Date :10/06/2021

AKV

PK/AKM/SAR-1/18.06.2021 : 4P/8C

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