



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

Tuesday, the Second day of March 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.9360 of 2019
IN
CRL A (MD) No.346 of 2019

SHANMUGASEKAR

... APPELLANT/1ST ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
EMANESWARAM POLICE STATION,
RAMANATHAPURM DISTRICT.
CRIME NO.161 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 imposed made in S.C.No.105 of 2017 on the file of the learned Additional District and Sessions Judge Paramakudi Dated 12.7.2019 pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD) No.346 of 2019:

Pleased to set aside the Judgment dated 12.07.2019 made in S.C.No.105/2017 on the file of the learned Additional District and Sessions Judge, Paramakudi against the appellant and allow 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.VEERA KATHIRAVAN, Senior Counsel for Mr.C.JEGANATHAN, Advocate for M/S.VEERA ASSOCIATES, 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 G.ILANGO VAN, J)

This Criminal Miscellaneous Petition is filed to suspend the sentence passed by the Additional District Sessions Judge, Paramakudi, in S.C.No.105 of 2017, dated 12.07.2019, and enlarge the petitioner/Appellant on bail, pending disposal of the criminal appeal.



2. The case of the prosecution is that the deceased and the accused 1 to 6 had previous enmity and in pursuance of the same, 28.09.2016, at about 8.30 p.m., in the night, the first accused and his brother, namely, Kesavan had a quarrel, over payment of electricity charges near Gandhinagar, in front of the house of the first accused. On hearing the noise, the complainant and the deceased went to the place of occurrence and they enquired about that. At that time, the accused, assembled in the place of occurrence with deadly weapons and with the intent to cause injury and death to the complainant assaulted them with wooden logs, hands etc., Subsequent to that the first and second accused with aruval, assaulted the deceased. The first accused assaulted the deceased and because of the injury, he fell down. When the complainant tried to save the deceased, the second accused caused injury to the complainant with the intent to cause death on right parietal region. The third accused also caused injury with iron rod to the defacto complainant. The accused numbers 4 to 6 also, assaulted, caused injury. So, the accused were tried for various offences under Sections 147, 148, 294 (B), 324, and 302 r/w 149 of IPC.

3. To prove the charges, on the side of the prosecution, 16 witnesses were examined and marked 24 documents. Material objects 6 were exhibited.

4. At the conclusion of the trial, it came to the conclusion that the charges against the first and second accused were proved. But, other accused were acquitted.

5. The petitioner is the first accused before the trial court was convicted under Section 294 (b) IPC and sentenced to pay a sum of Rs.500/- in default, to undergo, one month of the simple imprisonment; for the offence under section 302 IPC sentenced to under go life imprisonment and fine of Rs.1000/- in default, to undergo, one year simple imprisonment.

6. Challenging the conviction and sentence, the first accused is before this court along with the appeal, filed this petition to suspend the sentence and release on bail.

7. The learned senior counsel for the petitioner would submit that the injured suffered one injury on the head, as per the evidence of PW1, but, as per the postmortem report, 2 injuries were found and so, the case of the prosecution, only due to the injury, caused by the first accused, the death ensued is not correct; delay in launching the first information report etc., for the purpose of argument that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. In spite of contradictions, as set out in the grounds, the trial court has chosen to convict the petitioner. So, he would contend that in view of the discrepancies in the prosecution case, the petitioner is entitled for the
<https://hcservices.mca.in/hcservices> sentence and release on bail.



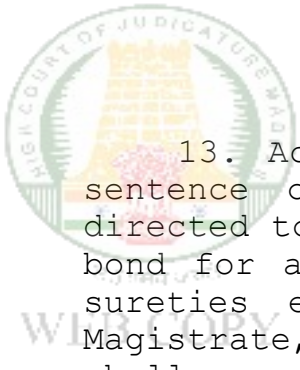
8. Next contention is the place of occurrence. As per AR report, it took place near Gandhinagar Market Area. But, as per the evidence of PW1, place of occurrence is near to the first accused house. So, according to him, the place of occurrence is not clearly established by the prosecution. Moreover, it is the contention that none of the persons, who are available, near the place of occurrence were examined. As per the case of the prosecution, more than 10 houses were situated in the place of occurrence. When that is being so, the non-examination of any one of the persons in the area creates doubt in the case of the prosecution.

9. Next contention is that as per the Accident report, it was informed to the Doctor that totally of seven persons assaulted. But, only six persons were charge sheeted in respect the seventh person, no evidence is available on record. According to the investigation officer, no investigation was undertaken to find out, who the seventh person was.

10. Next contention is that even as per the case of the prosecution, the occurrence has taken place, at about 6.00 p.m., there is a long delay in launching the First Information Report. Even though, it is the case of the prosecution that PW.3 and PW.4 also sustained injuries. They went to the hospital, only on the next day; The reason for the delay is not explained. So, according to the learned Senior counsel for the petitioner, when these discrepancies occur in the case of the prosecution, the petitioner is entitled for suspension of sentence and released on bail.

11. Mr.Anandraj, learned Additional Public Prosecutor would contend that the prosecution has established the case beyond doubt and the second and third witnesses supported case of the prosecution and so, the petitioner is not entitled for suspension of sentence.

12. The reading of the entire prosecution evidence and as well as the judgement of the court has shown that there was no previous enmity between the deceased and the first accused. This was admitted during the course of cross-examination by P.W.1. It appears that it is a case of sudden quarrel. When that is being so, the case of the prosecution that due to previous enmity, the occurrence took place, cannot be accepted. Even though, the injury inflicted upon the deceased, ultimately, resulted in the death and in the light of discrepancies, brought on record during the course of trial and as well through arguments, put forth by the petitioner, we are of the considered view that arguable points are available for the petitioner and considering the manner, in which, the occurrence took place and also considering the fact that the petitioner is in custody for the past 20 months, we deem it fit to suspend the sentence of the petitioner.



13. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended. The petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (**Rupees Ten Thousand only**) with two sureties each for a like sum to the satisfaction of Judicial Magistrate, Paramakudi, and on further condition that the petitioner shall appear before the said court once in a week i.e., on every Monday at 10.00 a.m, pending appeal.

sd/-
02/03/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PARAMAKUDI.
- 2.THE JUDICIAL MAGISTRATE,
PARAMAKUDI.
- 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
- 4.THE INSPECTOR OF POLICE,
EMANESWARAM POLICE STATION,
RAMANATHAPURM DISTRICT.
- 5.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 6.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.VEERA ASSOCIATES Advocate SR.No.1652

ORDER
IN
CRL MP(MD) No.9360 of 2019
IN
CRL A(MD) No.346 of 2019
Date :02/03/2021

DSS
TK/PN/SAR.3/04.03.2021/4P/8C