



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

Wednesday, the Seventh day of September Two Thousand and Twenty Two

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU
and
The Hon`ble Mr.Justice N.ANAND VENKATESH

Crl.M.P.(MD) No.10656 of 2022
in
Crl.A.(MD) No.377 of 2021

MARUDHU PANDI

... PETITIONER / APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
PARTHIPANUR POLICE STATION,
RAMANATHAPURAM 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 Fast Track Mahila Court, Ramanathapuram in S.C.No. 29 of 2016 Dated. 30.03.2021 and enlarge the petitioners on bail, pending disposal of above Criminal Appeal.

Prayer in Crl.A.(MD) No.377 of 2021:

To call for the records and set aside the Judgment and conviction dated 30.03.2021 passed by the learned Fast Track Mahila Court, Ramanathapuram in S.C.No.29 of 2016 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 M/S.KARUPPASAMY PANDIYAN.G, Advocate for the petitioner and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 30.03.2021 passed in S.C.No.29 of 2016 on the file of the Fast Track Mahila Court, Ramanathapuram and to enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner, who was convicted for an offence under Section 302 IPC and was sentenced to life imprisonment and pay a fine of Rs.3,000/- and in default to undergo 2 months Simple Imprisonment, has preferred the above criminal appeal.



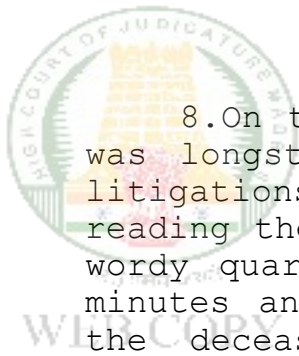
3.The case of the prosecution is that there was longstanding pathway dispute between the petitioner and the deceased and there were several litigations instituted by both the parties. On the fateful day, ie., on 27.04.2014, the accused person is said to have entered the property of the deceased and had attacked the deceased with a sickle indiscriminately and the deceased died on the spot.

4.The learned counsel for the petitioner submitted that the entire case of the prosecution hinges upon the evidence of P.W.2, who was a child witness. According to the learned counsel for the petitioner, even if the evidence of P.W.2 is taken as it is, the petitioner will be entitled under IV exemption to Section 300 IPC. To substantiate the submission, the learned counsel submitted that there was a longstanding pathway dispute between the parties and on the date of incident, there was a wordy quarrel between the accused and the deceased for nearly 15 minutes, before the accused is said to have attacked the deceased. In view of the same, apart from the ground of grave and sudden provocation, the ground of sustained provocation will also apply in the present case. Hence, the learned counsel submitted that the petitioner has strong grounds to urge in the appeal and sought for the suspension of sentence. The learned counsel also submitted that the petitioner has suffered incarceration for about 1½ years and therefore, requested this Court to consider the suspension of sentence.

5.The learned Additional Public Prosecutor vehemently opposed this petition. The learned Additional Public Prosecutor particularly, brought to the notice of this Court the postmortem report, which was marked as Ex.P.12 and submitted that the deceased was attacked indiscriminately with sickle and she sustained six grievous injuries in her neck, shoulder and head. The nature of injuries was also spoken by P.W.18, who was the postmortem Doctor. In view of the same, the learned Additional Public Prosecutor submitted that the very nature of injuries sustained by the deceased coupled with the evidence of P.W.2, clearly makes out a case punishable under Section 302 IPC.

6.In the alternate, the learned Additional Public Prosecutor also submitted that if the petitioner is ultimately entitled under exemption IV to Section 300 IPC, even then, he is liable to be punished under Section 304(1)IPC. Hence, on the available materials, there is no scope for acquittal of the petitioner and the sentence imposed against the petitioner should not be suspended and requested this Court to fix a date for the final hearing of the criminal appeal.

7.This Court has carefully considered the submission made on either side and the materials available on record.



8. On the materials available on record, it is clear that there was longstanding pathway dispute between the parties and various litigations were instituted by both sides. That apart, on carefully reading the cross-examination of P.W.2, it is seen that there was a wordy quarrel between the accused and the deceased for nearly 15 minutes and only thereafter, the accused is said to have attacked the deceased with sickle. Hence, *prima facie*, this Court is convinced that the petitioner has a good ground to argue the case and bring the case under exemption IV to Section 300 IPC. The petitioner is incarcerated for more than 1 ½ years, after he was convicted and sentenced by the trial Court. The petitioner has also paid the fine amount before the Court below. There are various grounds that have to be taken into consideration in the present criminal appeal and it will take some more time for this Court to hear the appeal finally.

9. In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No.29 of 2016 dated 30.03.2021 subject to the following conditions:

- (I) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate, Paramakudi;
- (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; and
- (iii) The petitioner shall appear before the respondent police every Monday at 10.30 a.m., for a period of 8 weeks. After completion of the period reporting before the respondent police, the petitioner shall report before the Judicial Magistrate Court, Paramakudi, on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-

07/09/2022

/ TRUE COPY /

08/09/2022

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



TO

1 THE JUDGE,
FAST TRACK MAHILA COURT,
RAMANATHAPURAM.

2 THE JUDICIAL MAGISTRATE,
PARAMAKUDI.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
RAMANATHAPURAM DISTRICT.

4 THE INSPECTOR OF POLICE
PARTHIPANUR POLICE STATION,
RAMANATHAPURAM 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.KARUPPASAMY PANDIYAN.G Advocate SR.No.9718.

ORDER

IN

Crl.M.P.(MD) No.10656 of 2022
in Crl.A.(MD) No.377 of 2021

Date :07/09/2022

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MK/VR/SAR.II/08.09.2022/4P/8C