



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

Friday, the Twenty Eighth day of October Two Thousand and Twenty Two

PRESENT

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

Crl.M.P.(MD) Nos.11515, 11518, 11519, 11006 and 11008 of 2022
in
Crl.A.(MD) No.526 of 2022

RAMAR	... PETITIONER/APPELLANT/ACCUSED NO.1 IN CRL MP(MD) NO.11515/2022
KANNAN	... PETITIONER/APPELLANT/ACCUSED NO.3 IN CRL MP(MD) NO.11518/2022
LAKSHMANAN	... PETITIONER/APPELLANT/ACCUSED NO.2 IN CRL MP(MD) NO.11519/2022
KARUPPAYI	... PETITIONER/APPELLANT/ACCUSED NO.5 IN CRL MP(MD) NO.11006/2022
GANAPATHI	... PETITIONER/APPELLANT/ACCUSED NO.4 IN CRL MP(MD) NO.11008/2022

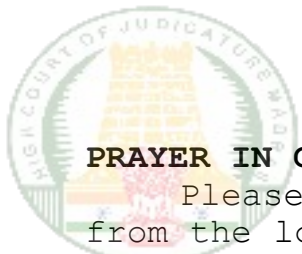
Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
NAALATINPUDHUR POLICE STATION,
THOOTHUKUDI DISTRICT.
(CRIME NO.54/2014).

... RESPONDENT/RESPONDENT/COMPLAINANT
IN ALL THE PETITIONS

COMMON PRAYER IN Crl.M.P.(MD) Nos.11515, 11518, 11519, 11006 and 11008 of 2022 in Crl.A.(MD) No.526 of 2022:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Execution of sentence by granting bail in SC No.227 of 2015 dated.22.07.2022 on the file of II Additional District and Sessions Judge, Tuticorin District pending disposal of the above Criminal Appeal.

**PRAYER IN Crl.A. (MD) No.526 of 2022 :**

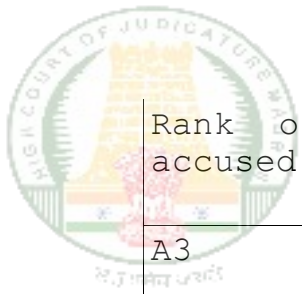
Pleaded to admit this appeal on file, to call for the records from the lower court in S.C.No.227/2015 on the file of II Additional District and Sessions Judge, Tuticorin District and set aside the judgment dated 22.07.2022 by acquitting the accused and by allowing the Appeal.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, Senior Counsel for M/S.PRABHU.K, Advocate for the petitioner and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

The criminal appeal has been filed against the judgment and order dated 22.07.2022 in S.C.No.227 of 2015 on the file of the II Additional District and Sessions Judge, Tuticorin. Pending appeal, the present petition has been filed to suspend the sentence and to enlarge the petitioners on bail.

2. These petitions have been filed by A1 to A5 to suspend the sentence, whereby the Court below has convicted and sentenced the accused persons in the following manner:

Rank of the accused	Provisions under which convicted	Sentence	Fine amount
A1, A2 and A3	148 IPC	To undergo rigorous imprisonment for three years each	-
A1 to A5	341 IPC	To undergo simple imprisonment for one month each	-
A1 & A2	302 r/w 34 IPC	To undergo imprisonment for life each	Rs.1,000/- each, in default, to undergo simple imprisonment for one year each
A1 & A2	307 r/w 149 IPC	To undergo rigorous imprisonment for ten years each	Rs.500/-, in default to undergo six months simple imprisonment



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Crl.A.(MD)

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Rank of the accused	Provisions under which convicted	Sentence	Fine amount
A3	302 r/w 149 IPC	To undergo imprisonment for life	Rs.1,000/-, in default, to undergo simple imprisonment for one year
A3	307 IPC	To undergo rigorous imprisonment for ten years	Rs.750/-, in default, to undergo simple imprisonment for six months.
A4 & A5	147 IPC	To undergo rigorous imprisonment for two years each	-
A4 & A5	302 r/w 114 IPC	To undergo imprisonment for life each	Rs.1,000/-, in default, to undergo simple imprisonment for one year each
A4 & A5	307 r/w 149 IPC	To undergo rigorous imprisonment for ten years each	Rs.500/-, in default to undergo six months simple imprisonment each

3. The case of the prosecution is that A4 and A5 are the parents of A1 to A3. P.W.1 is residing in the same colony, where the accused persons are residing. There was some quarrel between A5 and P.W.1 while fetching water from the public tap. On 03.04.2014, at about 11.30 a.m., the deceased and P.W.1 were proceeding towards the water tank and at that point of time, A1 to A5 are said to have waylaid the deceased and P.W.1 and on the instigation of A4 and A5, A1 and A2 attacked the deceased indiscriminately with knife all over the body and A3 attacked P.W.1 with knife on her neck and on the stomach and caused her injuries.

4. The deceased as well as P.W.1 were taken to Kovilpatti Government Hospital and the deceased was declared brought dead. P.W.1 was admitted as an inpatient. On getting information, P.W.14 is said to have gone to the hospital and recorded the statement of P.W.1 and an FIR came to be registered by P.W.14.

5. Heard the learned Senior counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.



6. The entire case of the prosecution hinges upon the evidence of P.W.1 and P.W.2, who are said to be the eyewitnesses in this case. The version given by P.W.1 and P.W.2 is questioned mainly on the ground that the very genesis of the case has been concealed. To substantiate the same, the injuries sustained by A2 was brought to the notice of this Court through the evidence of P.W.9 and in spite of such an injury being sustained by A2 and in spite of the statement recorded from him, the same was not investigated and the same is clear from the evidence of P.W.15. The evidence of P.Ws.1 to 3 also does not properly explain about the injuries sustained by A2.

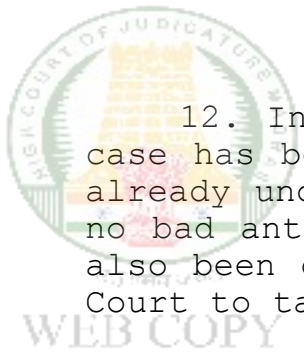
7. The learned Senior counsel appearing on behalf of the petitioners also complained about the unfair investigation done in this case. P.W.1, who was also injured, gave a statement to the Magistrate, which was recorded as a dying declaration on the premise that P.W.1 may die due to the injuries sustained by her. This statement was recorded from P.W.1 on 03.04.2014 between 1.40 p.m. and 2.10 p.m. The entire statement was concealed by the prosecution and only at a later point of time, on the complaint made by the petitioners, it came to be marked through P.W.1.

8. If the Magistrate had recorded the statement of P.W.1 between 1.40 p.m. and 2.10 p.m., the evidence of P.W.14, who is said to have gone to the hospital and recorded the statement of P.W.1, becomes doubtful. This is in view of the fact that P.W.14 claims to have recorded the statement of P.W.1 from 1.30 p.m to 2.30 p.m. This could not have happened since the Magistrate was recording the statement up to 2.10 p.m.

9. The version given by P.W.1 before the Magistrate and the version given before the Court also differs and the presence of the other witnesses in the scene of occurrence also becomes doubtful.

10. The so called instigation of A4 and A5 has not been disclosed by P.W.2 and P.W.3 states that after the crime was over, instigation was done by A4 and A5.

11. One other important discrepancy that was pointed out by the learned Senior counsel appearing on behalf of the petitioners is that the injuries that were sustained by the deceased and as spoken by the postmortem Doctor P.W.11 shows that there were totally 11 cut injuries found in the body of the deceased. Admittedly, the weapon used according to the prosecution was a knife. It is not known as to how these many cut injuries can be caused with a knife and even the postmortem Doctor has not been specifically asked at the time of evidence by showing the weapon as to whether the weapon can cause such cut injuries. The postmortem Doctor, even during the cross-examination, states that such cut injuries can be caused by aruval.



12. In the considered view of this Court, a strong pre-
case has been made out by the petitioners and the petitioners have
already underwent incarceration for nearly three months. There are
no bad antecedents against the petitioners and the fine amount has
also been deposited by them. It will take some more time for this
Court to take up the main appeal.

13. In view of the above, this Court is inclined to suspend the
sentence imposed by the Court below in S.C.No.227 of 2015 dated
22.07.2022 subject to the following conditions:

- (I) The petitioners 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,
No.I, Kovilpatti;
- (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) (a) The petitioners in Crl.M.P.Nos.11515, 11518 and
11519 of 2022/A1 to A3 shall report before the
respondent police every day for a period of eight
weeks and thereafter, once in a fortnight, ie., on the
first and 15th working day of every month till the
disposal of the appeal; and
(b) the petitioners in Crl.M.P.(MD) Nos.11006 and
11008 of 2022/A4 and A5 shall report before the
Judicial Magistrate, No.I, Kovilpatti, on the first
working day of every month till the disposal of the
appeal.
(c) If they are not able to appear before the trial
Court on any day, they 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 their absence, as directed by the trial
Court.

sd/-
28/10/2022

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/11/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1. THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TUTICORIN.
2. THE JUDICIAL MAGISTRATE NO.I,
KOVILPATTI.
3. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.
4. THE INSPECTOR OF POLICE,
NAALATINPUDHUR POLICE STATION,
THOOTHUKUDI DISTRICT.
5. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
6. THE SUPERINTENDENT,
WOMEN PRISON, MADURAI.
7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+5 CC to M/s.K.PRABHU, Advocate (SR-12087, 12088, 12089, 12090,
12091[I] dated 31/10/2022)

ORDER IN
Crl.M.P.(MD) Nos.11515, 11518,
11519, 11006 & 11008 of 2022
in
Crl.A.(MD) No.526 of 2022
Date :28/10/2022

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USK/SSS/SAR-I/01.11.2022/6P/13C