



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Twenty Sixth day of October Two Thousand and Twenty
Two

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PRESENT

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

CRL MP(MD) No.12327 of 2022
IN
CRL A(MD) No.381 of 2022

A.DURAISINGAM ... PETITIONER/APPELLANT/ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
DINDIGUL TOWN WEST POLICE STATION,
(IN CRIME NO.1138/2020). ... RESPONDENT/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 passed in SC No.112/2020, on the file of the learned Sessions Judge, Dindigul dated 18/04/2022.

Prayer in CRL A(MD)No.381 of 2022 :

To call for the records pertaining to Sessions Case No.112 of 2020 on the file of the learned Principal Sessions Judge, Dindigul and to set-aside the order of conviction passed in Sessions Case No.112 of 2020 dated 18.04.2022 and acquit the appellants/accused from all the charges.

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.ARUMUGAM C M, 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 by A2, seeking to suspend the sentence passed in S.C.No.112 of 2020 on the file of the Principal Sessions Judge, Dindigul, by judgment and order, dated 18.04.2022, whereby, the Court below convicted the petitioner for offence under Section 341 IPC and sentenced to undergo one month simple imprisonment and for offence under Section



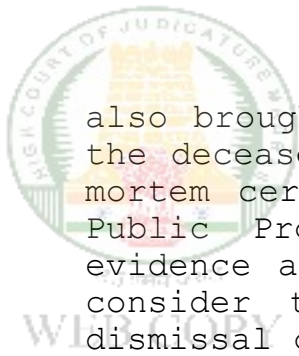
302 r/w. 34 IPC and sentenced to undergo life imprisonment to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo three months simple imprisonment.

2.The case of the prosecution is that the deceased Veerapandi was the son of P.W.1 and P.W.3. A1 is said to have married the daughter of P.W.1, four years prior to the occurrence. There was some family dispute and the sister of the deceased seems to have complained the deceased about the cruelty meted out to her and this was questioned by the deceased. With this motive, on 06.06.2020 at about 10.00 p.m. the accused persons (A1 and A2) are said to have abused the deceased in filthy language and A2 is said to have caught-hold of the deceased and A1 attacked the deceased with a billhook (M.O.1) indiscriminately. The deceased died at the Madurai, Government Rajaji Hospital, on 07.06.2020 at about 7.15 p.m. An FIR came to be registered against the accused persons and based on the appreciation of evidence, the Court below convicted both the accused persons. A2 has filed the present Criminal Miscellaneous Petition seeking for suspension of sentence.

3.Heard Mr.C.M.Arumugam, learned counsel appearing for the petitioner and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent.

4.The learned counsel for the petitioner submitted that the Court below has mainly relied upon the eye witness account of P.W.1 and P.W.2 and had taken into consideration the evidence of the post-mortem Doctor examined as P.W.10 and has come to a conclusion that both the accused persons have done to death the deceased. The learned counsel submitted that the incident had taken place on 06.06.2020 at about 10.00 p.m. and the FIR came to be registered on 07.06.2020 at about 6.30 a.m. Thereafter, the express FIR reached the Court with substantial delay only at 3.00 p.m. The learned counsel further submitted that P.W.1 and P.W.2 are interested witnesses and there are sufficient grounds to question their very presence in the scene of occurrence. The learned counsel submitted that the petitioner is now aged about 63 years and he has already suffered incarceration for more than six months. That apart, the petitioner has been roped in only with the aid of Section 34 of IPC.

5.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent vehemently opposed this petition mainly on the ground that this is the second petition filed by the petitioner and earlier petition was dismissed as withdrawn. The learned Additional Public Prosecutor further submitted that the Court below has properly appreciated the evidence of P.W.1 and P.W.2, who were the eye witnesses and has come to a categorical conclusion that the petitioner had caught hold of the deceased and thereafter, his son A1 had attacked the deceased indiscriminately with billhook (M.O.1). The learned Additional Public Prosecutor



also brought to the notice of this Court the injuries sustained by the deceased as spoken by the Doctor P.W.10, through whom the post-mortem certificate was marked as Ex.P13. The learned Additional Public Prosecutor submitted that in view of the overwhelming evidence available against the petitioner, there are no grounds to consider the suspension of sentence and hence, sought for the dismissal of this petition.

6.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the Order and Judgment passed by the Court below.

7.This is a case where the entire case of the prosecution hinges upon the eye witness account of P.W.1 and P.W.2. D.W.1 and D.W.2 were examined on the side of the accused, in order to establish that they were not present in the scene of occurrence. That apart, the evidence of P.W.1 and P.W.2 is being questioned on the ground that they are interested witnesses and there were several criminal cases pending against the deceased and only due to the previous enmity, the accused persons have been roped in this case.

8.The petitioner has been arrayed as A2 in this case and he has been convicted with the aid of Section 34 of IPC. The various infirmities that were pointed out by the learned counsel for the petitioner has to be considered in detail in the Criminal Appeal. Considering the grounds raised in this criminal appeal and also considering the age of the petitioner and the incarceration that has been suffered by him and also the fact that it will take some more time for this Court to take up the main criminal appeal for final hearing, this Court is inclined to consider the suspension of sentence of the petitioner, pending disposal of the appeal. It is also brought to our notice that the fine amount has already been remitted.

9.In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No.112 of 2020 dated 18.04.2022 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 Principal Sessions Judge, Dindigul;
- (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 cards or Bank pass Books to ensure their identity; and



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(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 learned Principal Sessions Judge, Dindigul, on the first working day of every English 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/-

26/10/2022

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27/10/2022

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

TO

1 THE PRINCIPAL SESSIONS JUDGE, DINDIGUL.

2 THE INSPECTOR OF POLICE, DINDIGUL TOWN WEST POLICE STATION,
DINDIGUL DISTRICT.

3 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, MADURAI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC TO MR.C.M.ARUMUGAM, Advocate (SR-12008[i] dated 27.10.2022)

ORDER

IN

CRL MP(MD) No.12327 of 2022

IN

CRL A(MD) No.381 of 2022

Date :26/10/2022

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RS/VR/SAR. (27.10.2022) 4P-6C