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

Monday, the Seventh day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL.M.P.(MD)Nos.15876 of 2022 and 5701 of 2023
in
CRL.A.(MD)Nos.871 of 2022 and 284 of 2023

in CRL MP(MD)No.15876 of 2022:

KANNAN @ RED KANNAN @ VASANTHARAJAN,
NOW CONFINED AT CENTRAL PRISON,
MADURAI

... PETITIONER/ APPELLANT No.2

Vs

THE INSPECTOR OF POLICE
E-1, K.PUDUR POLICE STATION,
MADURAI DISTRICT.

... RESPONDENT/RESPONDENT

in CRL MP(MD)No.5701 of 2023:

ARUNKUMAR @ DOOR

... PETITIONER/ APPELLANT/ ACCUSED No.3

- VS. -

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE(LAW AND ORDER),
E-1, K.PUDUR POLICE STATION, MADURAI TOWN.
CR.NO.01/2014

... RESPONDENT/RESPONDENT/COMPLAINANT



Criminal Miscellaneous 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 against the Petitioner in SC.No.439 of 2014 dt.12.9.2022 passed by the Learned I-Additional District and Sessions Judge, Madurai and enlarge the Petitioner on bail pending disposal of the above Appeal.

Prayer in CRL MP(MD). 5701/ 2023 :

To Suspend the Sentence imposed on the petitioner by the learned I Additional District and Sessions Court Madurai in Sessions Case No.439/2014 dt 12.09.2022 and enlarge the petitioner on bail pending disposal

Prayer in CRL A(MD). 871/ 2022 :

To call for the records in S.C.No.439 of 2014 dated 12.09.2022 passed by the learned 1st Additional District and Sessions Judge, Madurai and to set aside the same.

Prayer in CRL A(MD). 284/ 2023 :

To take the case on file, call for the records relating to the Judgment passed by the Learned I Additional District and Sessions Court, Madurai in Sessions Case no.439 of 2014 dated 12.09.2022 and acquit the Accused and set aside the same and allow the Criminal Appeal.

Common Order : These Criminal Miscellaneous Petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.KARUPPASAMY PANDIYAN G, Advocate for the petitioner in CRL MP(MD)No.15876 of 2022 and Mr.M.KANNAN, Advocate for the petitioner in CRL MP(MD)No.5701 of 2023 and of Mr.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent in both the cases, the Court made the following order:-

[Order of the Court was made by *M.NIRMAL KUMAR, J.*]

These petitions have been filed to suspend the sentence imposed against the petitioners / A2 and A3 respectively in S.C.No.439 of 2014, dated 12.09.2022 on the file of the learned 1st Additional District and Sessions Judge, Madurai and enlarge them on bail pending disposal of the Criminal Appeals.



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2.In the said judgment, the trial Court convicted the petitioners / A2 and A3 for the offence under Section 302 r/w 34 IPC, sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only) each in default to undergo simple imprisonment for six months.

3.The case of the prosecution is that A1 along with his friends A2 and A3 had come to the house of the deceased, namely, Senthil Kumar on 31.12.2013 and taken the deceased to drink alcohol and at that time, there was a wordy quarrel between them. Due to which, A1 had assaulted the deceased on his neck with knife, A2 had also assaulted the deceased with knife and A3 caught hold of the deceased facilitating the attack by A1 and A2, which was witnessed by P.W.7 and P.W.8. Due to which, the deceased succumbed to the injuries on the scene of occurrence.

4.Further, P.W.1 and P.W.2, who are the step father and mother of the deceased, had stated that A1 and his friends had come home on 31.12.2013 and taken the deceased for drinking alcohol. P.W.3 is the brother of the deceased, who had seen the deceased lastly going along with his friends. Since the deceased did not come back home for long time, P.W.1 and P.W.2 went in search of the deceased and found the



deceased lying dead, hence, lodged a complaint. P.W.13 Sub Inspector of Police received the complaint and registered the case and P.W.16 Investigating Officer took up investigation, went to the scene of occurrence, collected the materials and prepared observation mahazar, examined witnesses, thereafter, arrested the accused and based on the confession recovered the articles and finally, filed final report before the trial Court.

5. During trial, on the side of the prosecution P.W.1 to P.W.17 were examined and Exs.P.1 to P.20 were marked and besides, M.O.1 to M.O.3 were marked. On conclusion of the trial, the trial Court convicted the petitioners as stated above.

6. The contention of the learned counsel for the petitioner in CrI.M.P.(MD) No.15876 of 2022 / A2 is that there is a doubt in lodging complaint and registration of the First Information Report. According to him, P.W.10 wife of the deceased stated that between 11.30 p.m., and 12.00 a.m., on 31.12.2013, the Sub Inspector of Police had come and taken her to the scene of occurrence to identify her husband, thereafter, she lodged a complaint. However, P.W.1 step father and P.W.2 mother had given a different version as if the accused had come to their home and taken the deceased.

Thereafter, they went in search of their son Senthil Kumar. Later, they lodged



complaint. There are two versions with regard to the complaint and registration of the case.

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7.It is his further contention that P.W.7 and P.W.8 were projected as eye witnesses in this case, who had stated about A1 alone and as regards A2, there is no specific mention. Further, referring to the evidence of P.W.14 Doctor, who conducted postmortem, confirms, referring to Ex.P.5 Viscera Report, about intake of alcohol. The case of the prosecution is that at the time when the accused and the deceased were consuming alcohol, there was a wordy quarrel arose between them and due to which he was done to death. Hence, the root of the prosecution case is cut.

8.The contention of the learned counsel for the petitioner in CrI.M.P.(MD) No.5701 of 2023 / A3 is that the name of A3 does not find place in the complaint and A3 had been falsely implicated in this case. Further, there is no specific overt act against A3. P.W.1 and P.W.2 step father and mother of the deceased does not state anything about A3. Further, they admit that the accused were identified by them in the Police Station and they were taken to test identification parade in the Police jeep. The identity of the accused was disclosed, before test identification parade and hence, no credence can be given to the test identification parade.



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9.He further submitted that P.W.7 and P.W.8 though were not treated as hostile, in the cross-examination they admitted that they have not seen the occurrence and also not identified the accused. Hence, relying upon the evidence of P.W.7 and P.W.8 is not proper. Moreover, they go further and admitted that there is no light in the scene of occurrence and as such the evidence of P.W.7 and P.W.8 becomes highly doubtful. He further submitted that P.W.1 and P.W.2 clearly state about physical features of A3, which does not match with the physical features of A3, who was present in the Court. Therefore, the trial Court failed to consider all these aspects and wrongly convicted the petitioners. Hence, they sought for suspension of sentence.

10.The learned Additional Public Prosecutor for the respondent strongly objected and submitted that in this case occurrence took place on 31.12.2013 and investigation was completed and charge sheet was also filed on 07.03.2014 before the learned Judicial Magistrate No.6, Madurai. Thereafter, the case was committed to the Court of Sessions and taken on file in S.C.No.439 of 2014. The accused have been adopting dilatory tactics and have not co-operated with the trial. Hence, the trial got delayed and could be progressed only in the year 2017, chief examination of the witness was conducted in the year 2017 and the witnesses were not cross-examined



then and there, cross-examination was conducted on 24.11.2020. From the date of occurrence to the chief examination and thereafter, cross-examination, there have been considerable amount of delay by the accused. Due to long passage of time, it is natural that the memory cannot be precise. Therefore, discrepancies are natural, which only give credence to the evidence of the witnesses.

11.He further submitted that P.W.1 and P.W.2 step father and mother of the deceased clearly identified the accused coming to their house and taking the deceased along with them. P.W.7 and P.W.8 eyewitness, who were present in the scene of occurrence, clearly identified the accused. There might be some discrepancies in the evidence of P.W.7 and P.W.8, which the trial Court has rightly considered. P.W.14 Doctor confirmed that the deceased died due to the attack on the neck and Ex.P.5 is in conformity to the prosecution case. He further submitted that the points raised by the petitioners were raised during the trial, which have been rightly considered by the trial Court, thereafter, only the petitioners were convicted. Hence, he seeks dismissal of these petitions.

12.Head the learned counsel on either side and perused the materials available on record carefully.



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13. Considering the facts and circumstances of the case, we find that the witnesses have been cross-examined in this case with much delay nearly about three years after the chief examination. Hence, there might be some discrepancies, which is quite natural. Further, the points raised by the petitioners have already been raised during the trial, which have been rightly considered by the trial Court. *Prima facie* there is no material to interfere with the judgment of the trial Court. Hence, we are not inclined to grant suspension of sentence. Accordingly, these petitions are dismissed.

sd/-
07/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

YUVA

TO

- 1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
MADURAI.
- 2 THE INSPECTOR OF POLICE
E-1, K.PUDUR POLICE STATION, MADURAI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.



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

+ 1 CC TO Mr.M.KANNAN, ADVOCATE IN SR No.11964

ORDER
IN
CRL.M.P.(MD)Nos.15876 of 2022 and 5701 of 2023
in
CRL.A.(MD)Nos.871 of 2022 and 284 of 2023
Date :07/08/2023

SS/BUC/SAR-I/17/08/2023/9P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023