



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Thirtieth day of November Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice N.ANAND VENKATESH

CRL MP(MD) No.11919 of 2022
IN
CRL A(MD) No.537 of 2021

THIRUMALAIYANDY

... APPELLANT/PETITIONER/
ACCUSED NO.3

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
SHENCOTTAI POLICE STATION,
TENKASI DISTRICT.
CRIME NO.14/2015.

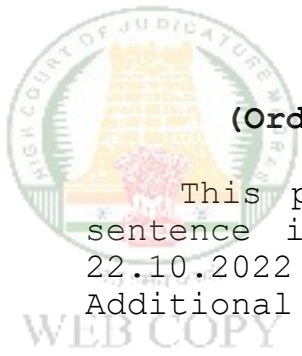
... RESPONDENT/COMPLAINANT

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 against the petitioner by the judgment dt.22/10/2021 in SC No.510/2015 on the file of the Additional District and Sessions Judge(FTC), Tenkasi and grand bail to the petitioner.

PRAYER IN CRL A(MD) No.537 of 2021 :

Pleased to call for the records pertaining to the Judgment dated 22.10.2021 in SC No.510 of 2015 on the file of the Additional District Sessions Judge (FTC), Tenkasi and set aside the same as illegal.

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.VINOTH BHARATHI R, Advocate for the petitioner and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



(Order of the Court was made by N. ANAND VENKATESH, J

This petition has been filed by A3 seeking for suspension of sentence imposed on the petitioner, by judgment and order dated 22.10.2022 passed in S.C.No.510 of 2015 on the file of the learned Additional District and Sessions Judge (FTC), Tenkasi.

2. The appellant was convicted and sentenced in the following manner:

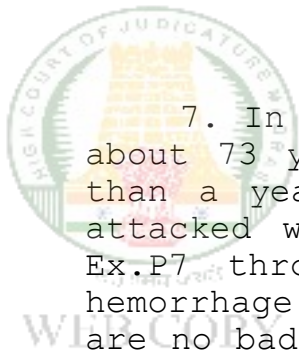
| Offence | Sentence |
|----------------|---|
| 302 of IPC | Life Imprisonment and fine of Rs.2,000/-, in default, to undergo two (2) years rigorous imprisonment |
| 452 of IPC | Three (3) years Rigorous Imprisonment and fine of Rs.2,000/-, in default, to undergo one (1) year simple imprisonment |
| 294 (b) of IPC | fine of Rs.2,000/-, in default, to undergo one (1) year simple imprisonment |

3. The case of the prosecution is that the deceased Mrugesh Kumar questioned A1, when he assaulted his friend, Ruben (PW3) and this incident took place on 09.01.2015 between 05.30 p.m., and 07.00 p.m. This incident had created previous enmity between the deceased and A1. A1 along with A2 and A3 are said to have gone to the house of the deceased on the same day at about 10.15 p.m. and abused him in filthy language and trespassed into the house of the deceased and he was attacked indiscriminately, which resulted in his demise.

4. There are totally three accused persons in this case and the petitioner is ranked as A3 and he is the father of A1 and A2. The overt act that has been attributed as against A3 is that he had attacked the deceased with a wooden log on his head and caused lacerated injury in the left parietal region of scalp.

5. Heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.

6. PWs.1 and 2 are the eye-witnesses, whose evidence was relied upon by the Court below. The learned counsel appearing for the petitioner submitted that their presence is highly doubtful and unbelievable and they could not have witnessed the incident. That apart, the manner in which the criminal law was set into motion was doubtful and there was a contradiction in this regard between the evidence of PW1 and PW2.



7. In the considered view of this Court, the petitioner is aged about 73 years and he has already suffered incarceration for more than a year and the overt act attributed against A3 was that he attacked with wooden log. The post-mortem certificate marked as Ex.P7 through PW19 shows that the cause of death was due to hemorrhage shock arising out of stab injury numbers 2 and 3. There are no bad antecedents against the petitioner and it will also take some more time for this Court to take up the appeal for hearing on merits. In view of the same, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No.510 of 2015 dated 22.10.2022 subject to the following conditions:-

- (i) The petitioner shall pay the fine amount as imposed by the Court below, if not paid;
- (ii) The petitioner shall execute 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 Additional District and Sessions Judge (FTC), Tenkasi;
- (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
- (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 Additional District and Sessions Judge (FTC), Tenkasi, 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/-
30/11/2022

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05/12/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTC),
TENKASI.
2. THE INSPECTOR OF POLICE,
SHENCOTTAI POLICE STATION,
TENKASI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.VINOTH BHARATHI, Advocate (SR-14176[I] dated
01/12/2022)

ORDER IN
CRL MP(MD) No.11919 of 2022
IN
CRL A(MD) No.537 of 2021
Date :30/11/2022

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