

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.M.P. No.9785 of 2017
in
Crl. A. No.474 of 2017

Muthusamy

.. Petitioner/Appellant

Vs.

The State by Inspector of Police,
Vellithiruppur Police Station,
Anthiyur,
Erode District.

.. Respondent/Respondent

PRAYER: Criminal Miscellaneous Petition under Section 389(1) of Cr.P.C.
suspension of sentence imposed in the judgment dated 12.05.2017 made
in S.C. No.145 of 2016 on the file of the Additional Sessions Judge, Magalir
Neethi Mandram (Fast Track Mahila Court), Erode.

For appellant : Mr.R.Prabakar

For respondent : Mr.J.Karuppiah
Additional Public Prosecutor

ORDER

(Made by S.MANIKUMAR, J.)

Muthusamy, the 1st accused in Sessions Case No.145 of 2016 on the file of the Additional Sessions Judge, Ramanathapuram, is the appellant, in the criminal appeal. The first accused/first appellant, has been prosecuted for alleged offences punishable under Sections 120-B(1) r/w 302, 120-B(1) r/w (part 1), 364, 302, 392 (Part 1), 201 (Part 1) r/w 302 of IPC against A1.

2. Along with the appellant, one Yuvaraj (2nd accused), has been prosecuted for alleged offences punishable under Sections 120-B(1) r/w 302, 120-B(1) r/w 392 (Part 1), 302, 392 (part 1), 201 (Part 1) r/w 302 of IPC.

3. After trial, by a judgment dated 12.05.2017, the learned trial judge, found the appellant/A1 guilty of the offence punishable under Sections 120-B(1) r/w 302, 120-B(1) r/w 392 (part 1), 364, 302, 392 (part 1), 201 (part 1) r/w 302 of IPC and the second accused guilty of the offences punishable under Sections 120-B(1) r/w 302, 120-B(1) r/w 392 (part 1), 302, 392 (part 1), 201 (part 1) r/w 302 of IPC and accordingly,

convicted them and imposed the following sentences:-

(a) The first accused / first appellant has been sentenced to undergo life imprisonment for the offence under Sections 120-B(1) r/w 302 , 364 and 302 IPC. 10 Years rigorous imprisonment for the offence under Section 120-B(1) r/w 392 (part 1), 10 years rigorous imprisonment for offence under section 392 (part 1) and 7 years rigorous imprisonment for offence under Section 201(part 1) r/w 302, with a total fine of Rs.600/-.

(b) Similarly, the second accused/second appellant has been sentenced to undergo life imprisonment for the offence under Sections 120-B(1) r/w 302, and 302 IPC. 10 Years rigorous imprisonment for the offence under Section 120-B(1) r/w 392 (part 1), 10 years rigorous imprisonment for offence under section 392 (part 1) and 7 years rigorous imprisonment for offence under Section 201(part 1) r/w 302, with a total fine of Rs.500/-. In respect of the other charge, they have been acquitted. The sentences imposed on the accused were ordered to run concurrently.

4. Challenging the judgment of the trial Court, dated 12.05.2017, the present criminal appeal has been preferred by the first accused against the conviction and sentence imposed on him.

5. The prosecution case, as discerned from the evidence adduced on the side of the prosecution, is that Irusammal, since deceased, is the aunt of the appellant Muthusamy. Appellant was married and not living with his wife, but was living with one Lakshmi of Chennampatti village. The 2nd accused Yuvaraj was working in K.S.S. Crusher at Kittampatti, Manjukuradu. He was driving the water vehicle. The appellant, while working in K.S.S. Crusher, got acquaintance with Yuvaraj and they became friends. As there was no work in the crusher and they could not earn money for their expenses.

6. Knowing that Irusammal was wearing large number of silver bands on her hands, gold nose stud and having money, on 02.12.2012, the accused have conspired to kidnap Irusammal to Kittampatti, to murder her, and then rob the jewels and cash. The appellant asked Irusammal some amount to redeem his vehicle. He abducted Irusammal in the evening on 03.12.2015 from Kalaiyanur to Kittampatti Bus stop. The 2nd accused Yuvaraj was waiting there, on the western side of the house of Marappan at Kittampatti, Manjukuradu. Both the accused, with the common intention to murder Irusammal and to rob the amount and jewels, shut her mouth with the saree worn by her, strangled and

murdered her. They robbed 8 silver bands, 2 golden nose studs and cash of Rs.8,000/-, which were kept by Irusammal. The accused, with common intention to hide the offence of murder, they took the dead body of Irusammal, from the occurrence place to Manjukaradu K.S.S. Crusher hill rock and hidden it, in a narrow gap of hill rock. Therefore, the accused committed the offences punishable under Section 364, 392, 302, 201 r/w 34 of IPC. The Inspector of Police, Anthiyur circle, filed the charge sheet against the accused.

7. In order to prove the prosecution case, 18 witnesses have been examined as PWs.1 to 18, 26 documents have been marked as Exs.P1 to P26 and 8 material objects have been marked as MOs.1 to 8, on the side of the prosecution. After completion of recording of evidence adduced on the side of the prosecution, incriminating materials found therein were culled out and the accused were questioned under Section 313(1)(b) Cr.P.C. regarding such incriminating materials and thus, an opportunity was given to them to explain such incriminating materials. They denied such incriminating evidence as false, and reiterated their stand that they were innocent and that case had been foisted against them. No witness was examined, no document was marked and no material object was

produced, on the side of the accused.

8. The learned trial Judge considered the evidence, arguments advanced on both sides and upon such consideration, convicted the accused and imposed punishments, as indicated supra.

9. On 08.08.2017, we admitted the criminal appeal and the learned Additional Public Prosecutor took notice on behalf of the State.

10. Learned counsel for the appellant/1st accused contended that the conviction recorded by the trial court is against law, weight of evidence and preponderance of probabilities; that the prosecution failed to prove its case beyond reasonable doubt by cogent and reliable evidence; that the evidence of PW1 is totally against the prosecution case and he is an interested witness; that the trial court failed to note that extra judicial confession said to have been recorded before PW3 is not reliable evidence. Statement has been recorded in the police station and the same does not have evidenciary value; that the case is totally based on circumstantial evidence; that there is no chain of events to connect the accused with the crime and that the entire case is foisted against the

appellant, based on the suspicion of PW1; that the trial court committed an error in convicting the accused without properly appreciating the evidence and without applying the correct principles of law.

11. Per contra, it is the contention of the learned Additional Public Prosecutor that occurrence has been proved by the prosecution by reliable evidence including the testimony of eye witnesses; that the prosecution also proved confession relating to the occurrence; that the minor differences found in the evidence adduced on the side of the prosecution are sought to be blown out of proportion to show them as material contradictions affecting the case of the prosecution. It is his further contention that on proper appreciation of evidence and applying correct principles of law, the learned trial judge came to the conclusion that the accused have committed the offences, for which they were charged and that hence, there is no case for suspension of sentence at this stage.

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12. We have given our anxious considerations to the above said submissions made on both sides and perused the materials available on record.

13. Going through the materials on record prima facie, we are of the view that the trial court has considered the material evidence for convicting the accused. The case involved is criminal conspiracy and murder of a female for robbery. We are of the view that the petitioner/appellant, has not made out a case for suspension of sentence.

Accordingly, the criminal miscellaneous petition is dismissed.

(S.M.K., J)

(V.B.S., J)

22.08.2017

Index : Yes / No

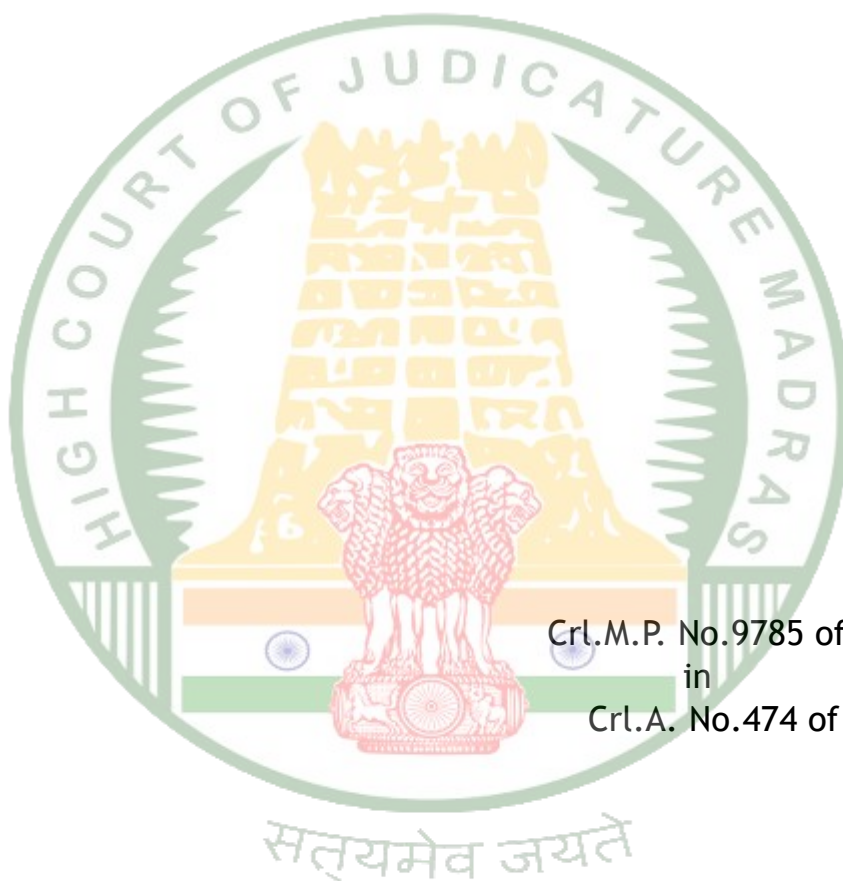
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