

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Seventh day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.101 OF 2019

IN CRL.A.NO.5 OF 2019

YUVARAJ

[PETITIONER / APPELLANT / ACCUSED]

Vs

STATE

[RESPONDENT]

INSPECTOR OF POLICE,
ELACHIPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.
CR.NO.62/2013.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.5 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence made in S.C.No.27/2016 on the file of the Principal Sessions Judge, Namakkal by order dated 06.12.2018 and release the Petitioner/Appellant/Accused on bail, pending disposal of the above CRL.A.NO.5 OF 2019 [IN CRL.MP.NO.101 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.5 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.A.PADMANABAN, Advocate for the petitioner and of MR.R.PRATHAP KUMAR ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the sole accused in Sc.No.27/2016 on the file of the Court of Principal Sessions Judge, Namakkal, and vide impugned judgment dated 06.12.2018, he was convicted for the commission of the offence u/s.302 IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- with a default sentence of 4 years simple imprisonment. Challenging the said conviction and sentence, the petitioner/appellant preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The learned counsel for the petitioner/appellant would submit that the deceased in this case is none other than the father of the petitioner/appellant and the motive alleged by the prosecution in the extra-judicial confession said to have been given by the petitioner/appellant to P.W.6-Village Administrative Officer of Periyamanali Village that he pestered his father/deceased to part with money for purchasing rig vehicle and since it was declined, he got enraged and therefore, he assaulted his father by using Koduval [M.O.1], as a result of which, the deceased died. It is the further submission of the learned counsel for the petitioner/appellant that the case of the prosecution rests upon circumstantial evidence and the primary witnesses who were supposed to prove the case of the prosecution, had turned hostile and except the alleged extra-judicial confession said to have been given by the petitioner to P.W.6-VAO coupled with the scientific evidence, no other circumstances have been projected by the prosecution to connect the petitioner/appellant with the commission of the crime and since the chain of circumstances is not complete, the Trial Court, ought to have awarded benefit of doubt to the petitioner/appellant and acquitted him and since the chance of success is very bright in the appeal, prays for suspension of the sentence.

4 Per contra, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that since the petitioner/appellant was searched by the police with regard to the commission of the offence of murder of his own father, the petitioner/appellant had voluntarily appeared before P.W.6-VAO on 04.05.2013 at about 05.00 p.m., and admitted his guilt and the statement given by the petitioner/appellant was reduced into writing, marked as Ex.P.9, based on which P.W.6 has prepared his Special Report under Ex.P.10 and thereafter, took him to the police station, entrusted him to the Station House Officer at 07.00 p.m. on the same day and the petitioner/appellant had voluntarily came forward to give confession statement and as per the admissible portion of the same, incriminating articles were seized/recovered which include M.O.1-Koduval. The doctor, who conducted autopsy, viz., P.W.7 had opined that the deceased had died on account of homicidal violence. The Postmortem Certificate [Ex.P.15] as well as the Final Opinion [Ex.P.17] had amply established the prosecution case that the deceased died on account of homicidal violence and he was done to death by the petitioner/appellant and the Trial Court, on proper appreciation and consideration of the oral and documentary evidences and other materials, had rightly reached the conclusion of guilt and sentenced him and prays for dismissal of this petition.

5 This Court has considered the rival submissions and also perused the materials placed before it including the impugned judgment.

6 P.W.1 is the mother of the petitioner/appellant / wife of the deceased and except the fact that she found the body of her husband with cut injuries, she did not depose anything. P.W.2 was only a hearsay witness and P.W.3 - sister of the

petitioner/appellant [daughter of P.W.1 and the deceased] could not say anything except by supporting the testimony of P.W.1, her mother, as to the body being found with cut injuries. P.Ws.4 and 5 also turned hostile. As rightly pointed out by the learned counsel for the petitioner/appellant, except the testimony of P.W.6-VAO before whom the petitioner/appellant said to have given the extra-judicial confession and later on, recovery of incriminating articles in pursuant to the admissible portion of the confession statement before the Investigating Officer, coupled with the scientific evidence, no other materials had been projected by the prosecution to connect the petitioner/appellant with the commission of the crime. It is also to be remembered at this juncture that the case of the prosecution rests upon circumstantial evidence and therefore, the prosecution is under obligation to connect all links of the chain of circumstances. It prima facie appears that the prosecution has failed to do so. The Trial Court has taken into consideration, the simple denial of the petitioner/appellant to the incriminating questions put to him u/s.313[1][b] Cr.P.C. as the connecting link/circumstance. As pointed out earlier, except the alleged extra-judicial confession, subsequent recovery and scientific evidence, no other circumstances have been projected by the prosecution to establish the guilt of the accused/petitioner/appellant and as such, this Court is of the considered view that the petitioner/appellant is entitled for the suspension of the substantive sentence of imprisonment.

7 In the result, the petition is **ordered** and the substantive sentence of imprisonment alone in respect of the petitioner/appellant is suspended and the petitioner/appellant directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- [Rupees ten thousand only] with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Tiruchengode and on further condition that the petitioner/appellant shall appear before the Committal Court, viz., the Court of Judicial Magistrate, Tiruchengode, on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-

07/03/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL.

2 THE JUDICIAL MAGISTRATE,
TIRUCHENGODE.

3 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL JAIL, COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
ELACHIPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.

+1C.C. to M/S.A.PADMANABAN Advocate on payment of necessary
charges SR NO.4814

Order

in

CRL MP.NO.101/2019

in

CRL.A.NO.5/2019

Date :07/03/2019

From 7.2.2001 the Registry is issuing certified
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MK:12/03/2019

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