

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth 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.1391 of 2019

in CRL.A.No.709 of 2018

MANIKANDAN

[PETITIONER / APPELLANT]

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
VEERANAM POLICE STATION,
SALEM.
CRIME NO.176 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.709 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in S.C.No.54 of 2016 on the file of the Learned II Additional District and Sessions Judge, Salem dated 03.10.2018 and Enlarge the petitioner on bail, pending disposal of the above CRL.A.No.709 of 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.709 of 2018 on the file of the High Court and upon hearing the arguments of M/S.S.MANOCHARAN, 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 arrayed as A-4 out of four accused in SC.No.54/2018 on the file of the Court of Additional District and Sessions Judge, Fast Track Court-II, Salem. He was prosecuted for the commission of the offences u/s.449, 302 and 506[ii] IPC and The Trial Court, vide impugned judgment dated 03.10.2018, had found the accused persons, viz., A-1 to A-4 not guilty u/s.506[ii] IPC and however, the petitioner/appellant/A-4 found guilty for the commission of the offences u/s.449 and 302 IPC and imposed with a sentence of 7

years rigorous imprisonment and fine of Rs.1000/- with a default sentence of 1 year simple imprisonment for the commission of the offence u/s.449 IPC and to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 1 year simple imprisonment for the commission of the offence u/s.302 IPC. The period of incarceration already undergone by him was ordered to be set off u/s.428 Cr.P.C., and the sentences were also ordered to run concurrently. Challenging the conviction and sentence, the the petitioner/appellant/A-4 preferred the present appeal and pending disposal of the appeal, came forward to file the present miscellaneous petition seeking suspension of substantive sentence of imprisonment.

2 Mr.S.Manoharan, learned counsel for the the petitioner/appellant/A-4 would submit that the motive for the commission of the offence, as projected by the prosecution is that A-1 - Sasikala is the daughter of the deceased Thoppagounder and she developed illicit intimacy with A-2 and the same was castigated by her father - deceased and therefore, a decision has been taken to do away with his life and accordingly, on the fateful day, i.e., on 11.08.2015 at about 9.30 hours, A-1 to A-4 went to the house of the deceased and A-1 stood on the doorsteps of the house and A-2 along with the other accused, had repeatedly assaulted the deceased with lethal weapons and as a consequence, he died.

3 Learned counsel for the the petitioner/appellant/A-4 has drawn the attention of this Court to the testimonies of P.Ws.1 and 3 and would submit that according to the prosecution, they were the eyewitnesses to the occurrence and even as per the testimony of P.W.1, he was not aware as to the person who has written the complaint under Ex.P.1 and admittedly, he did not write the complaint and as such, the origin and genesis of the complaint itself is doubtful. It is his further submission that as regards motive aspect, except the testimony of the interest witness, viz., P.W.1, who happens to be the younger brother of the deceased, no other witnesses have spoken to about that fact and P.W.3 did not specifically identify the accused persons, though he has spoken to about the overt acts on the part of each of the accused, viz., A-2 to A-4. Since the case of the prosecution is bristled with very many inconsistencies and improbabilities and since the the petitioner/appellant/A-4 is having a bright chance of success in the appeal, prays for suspension of the substantive sentences of imprisonment. He would also submit that the substantive sentence of imprisonment imposed against A-1 has been suspended by this Court.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that P.W.1 is the younger brother of the deceased and he has, not only spoken to about the motive aspect but also the specific overt acts on the part of A-2 to A-4 and his testimony was also amply corroborated by P.W.3 and that apart, the

scientific evidence in the form of Postmortem Report, marked as Ex.P.20 and the testimony of the doctor who conducted autopsy, viz., P.W.15, would amply prove that the deceased had died on account of homicidal violence and P.W.8 has also spoken about the arrest and recovery of M.O.4-knife said to have been used by the the petitioner/appellant/A-4 and hence, prays for dismissal of the petition.

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

6 A perusal of the impugned judgment as well as the testimonies of the eyewitnesses, would *prima facie* disclose that P.W.1 has not only spoken to about the motive aspect but also the specific fatal overt acts on the part of A-2 to A-4 and it has been corroborated by the testimony of P.W.3 also. The scientific evidence would also sustain the case of the prosecution that the deceased died on account of homicidal violence and as per the testimony of P.W.8, in pursuant to the admissible portion of the confession statement of the the petitioner/appellant/A-4, marked as Ex.P.6, M.O.4-knife was recovered. A-1 has not been attributed to any fatal overt act and hence, she has been convicted for the commission of the offence u/s.302 IPC with the aid of section 34 IPC and as such, the suspension of substantive sentence of imprisonment insofar as A-1 is concerned, would not come to the help or aid of the the petitioner/appellant/A-4. In the light of the facts and circumstances, this Court is of the considered view that it is not a fit case wherein, the substantive sentence of imprisonment of the the petitioner/appellant/A-4 can be granted.

7 In the result, the miscellaneous petition is dismissed.

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-sd/-

25/03/2019

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 II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
SALEM

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE,
VEERANAM POLICE STATION, SALEM

C.C. to M/S.S.MANOHARAN Advocate on payment of necessary
charges

Order

in
CRL MP.1391/2019
in
CRL.A.No.709/2018

Date :25/03/2019

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