

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Sixth 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.2231 of 2019

IN CRL.A.No.90 OF 2019

KALEEL RAHMAN @ RAHMAN @ RAGU [PETITIONER]

Vs

INSPECTOR OF POLICE [RESPONDENT]
ORLEANPET POLICE STATION,
PUDUCHERRY.
CR. NO.264 OF 2008.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.90 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Honble Principal Sessions Judge at Puducherry in SC.No.70 of 2008 by judgment dt.13.10.2017, sentencing the Petitioner to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 1 year, for the offence U/S.302 IPC and to sentence him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months for offence under section 380 IPC and enlarge the petitioner on bail, penbding disposal of the above Crl.A.No.90 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.90 OF 2019 on the file of the High Court and upon hearing the arguments of MR.A.TAMILVANAN ADVOCATE FOR MR.E.ANBARASAN Advocate for the petitioner and of MR.BALAMURUGANE, PUBLIC PROSECUTOR FOR PUDUCHERRY 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.70/2008 on the file of the learned Principal Sessions Judge [Full Additional Charge] / II Additional Sessions Judge, at Puducherry and he stood charged, tried and convicted for the commission of the offences u/s.302 and 380 IPC. The Trial Court, vide impugned judgment dated 13.10.2017,

has sentenced the petitioner/accused to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of one year rigorous imprisonment for the commission of the offence u/s.302 IPC and sentenced to undergo 3 years rigorous imprisonment with a fine of Rs.1000/- and in default, to undergo six months rigorous imprisonment. Challenging the said conviction and sentence, the petitioner/appellant preferred the present appeal and pending appeal, he has filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The learned counsel for the petitioner/appellant would submit that the case of the prosecution rests upon circumstantial evidence and according to the prosecution, the deceased Selvi had stayed with the petitioner/appellant in Royal Lodge, Maraimalai Adigal Salai, Puducherry on the pretext of treating the deceased Selvi, being a TB Patient by stating the deceased as his wife to P.W.1-Manager of the lodge. On 27.06.2008, P.W.4-Room Boy of the said Lodge made a routine check of the room and on opening the window, he found the dead body of the deceased and immediately informed the Manager. The prosecution, in order to sustain the case which rests upon circumstantial evidence, had examined P.Ws.1 to 20, marked Exs.P.1 to 28 and also M.Os.1 to 16. The crucial witnesses are P.W.1-Manager of the Royal Lodge who had spoken about the taking of the room on rent by the petitioner/appellant accompanied by the deceased ; P.W.3-who is also a Manager of the Lodge and he had also spoken about the said fact ; P.W.4-Room Boy of the Lodge has spoken about the ordering of drinks and food articles by the petitioner/appellant as well as seeing the dead body. P.W.12 has spoken to about the pledging of jewels by the petitioner/appellant as well as the recovery ; P.W.13-frined of the petitioner/appellant had spoken to about the exchange of the mobile phones as well as handing over of the cash for depositing in the bank Account. The Finger Print Expert was examined as P.W.15 and he has spoken about the matching of the finger print found in the room of the Lodge wherein the petitioner/appellant as well as the deceased Selvi stayed together. P.W.16-the doctor who conducted autopsy had certified under Ex.P.15 - Postmortem Certificate that the deceased had died due to asphyxia as a result of compression on the neck.

3 The primordial submission of the learned counsel for the petitioner/appellant is that admittedly, the prosecution did not let in evidence as to the motive aspect and in the absence of the same, especially in a case of circumstantial evidence, it cannot be said that the chain of circumstances projected by the prosecution to link the petitioner/appellant with the commission of the offence, has been proved and that apart, the testimonies of P.Ws.1, 3 and 4 are highly artificial and bristled with very many infirmities and inconsistencies and since there are very many vital links missing in the chain of circumstances projected by the prosecution, the Trial Court ought to have awarded benefit of doubt and acquitted the petitioner/appellant and since the petitioner/appellant is having a bright chance of success in the appeal, prays for suspension of the sentence.

4 *Per contra*, Mr.Balamurugane, learned Additional Public Prosecutor [Puducherry] appearing for the respondent would submit by drawing the attention of this Court to paragraphs No.47 and 49 of the impugned judgment that as to the motive aspect, the Trial Court has placed reliance upon two judgments of the Hon'ble Supreme Court of India and that apart, as to the last seen theory of the deceased and the petitioner/appellant staying together, has been amply spoken to by P.W.s1, 3 and 4 and as to the recovery, P.w.12 has spoken to the said fact and the amount realised out of pledging of the jewels worn by the deceased, was also asked to be deposited in the bank account through the testimony of P.W.13 who had also spoken about the exchange of the mobile phones between him and the petitioner/appellant and that apart, the scientific evidence has also proved the case of the prosecution that the deceased died on account of homicidal violence and hence, 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 A perusal and consideration of the materials placed in the form of oral and documentary evidence and other materials before this Court would prima facie indicate that the prosecution was able to sustain its case of circumstantial evidence and though there is no direct evidence as to the motive aspect, the Trial Court in paragraphs No.47 and 49 of the impugned judgment, has placed reliance upon 2 judgments of the Hon'ble Apex Court and reached the conclusion that it was the petitioner/appellant alone who committed the offence. The last seen theory has also been amply spoken to by P.Ws.1 and 3 - Manager of the Royal Lodge and P.W.4-Room Boy of the said lodge. The jewels worn by the deceased were also pledged by the petitioner/appellant with P.w.12 and he has also spoken that fact and P.W.13 has also spoken to about the parting of the money to him by the petitioner/appellant for the purpose of depositing the same and that apart, the Finger Print Expert who was examined as P.W.15 also has spoken about the matching of the finger print lifted from the scene of crime with that of the petitioner/appellant. The scientific evidence has amply proved that the deceased Selvi died on account of homicidal violence. In the considered opinion of the Court, the points urged by the learned counsel for the petitioner/appellant would revolve around appreciation of the oral and documentary evidences and at this point of time, the said exercise cannot be done by this Court.

7 This Court, upon consideration of the entire materials, is of the view that this is not a fit case wherein, the suspensions of the substantive sentence of imprisonment can be granted.

8 In the result, the criminal miscellaneous petition stands **dismissed.**

-sd/-
06/03/2019

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,
PUDUCHERRY.

2 THE INSPECTOR OF POLICE,
ORLEANPET POLICE STATION,
PUDUCHERRY.

3 THE PUBLIC PROSECUTOR,
PUDUCHERRY.

4 THE SUPERINTENDENT,
CENTRAL PRISON, KALAPET,
PONDICHERRY.

+1 C.C. to M/S.E.ANBARASAN Advocate on payment of necessary charges in SR.NO. 4941

Order

in
CRL MP.2231/2019
IN CRL.A.NO.90 OF 2019

Date :06/03/2019

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MLT-11/03/2019

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