

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eighteenth 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.2308 OF 2019

IN CRL.A.NO.93 OF 2019

PAVADAI

[PETITIONER / APPELLANT]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
SRIMUSHNAM POLICE STATION,
CUDDALORE DISTRICT
CR.NO.81 OF 2017.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.93 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed against Petitioner/Appellant in S.C.No.8 of 2018 dated 06.02.2019 by the Hon'ble III Additional District cum Sessions Judge, Cuddalore at Vridhachalam and enlarge petitioner on bail pending disposal of the accompanying CRL.A.NO.93 OF 2019 [IN CRL.MP.NO.2308 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.93 OF 2019 on the file of the High Court, and upon hearing the arguments of M/S.G.PUGAZHENTHI, 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/appellant is the sole accused in SC.No.8/2018 on the file of the Court of III Additional District and Sessions Judge, Cuddalore at Vridhachalam and vide the impugned judgment dated 06.02.2019 he was found guilty for the commission of the offence u/s.302 IPC and the Trial Court had imposed the sentence of rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 3 months simple imprisonment. The petitioner/appellant/sole accused was also granted set-off u/s.428 Cr.P.C. 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/accused would submit that the case of the prosecution rests upon the circumstantial evidence and according to the prosecution, the deceased viz., Ganesan, was employed as a Forest Watcher and the petitioner/appellant/accused was employed as a Mason and both of them were friends for nearly 20 years. It is the further case of the prosecution that Ganesan was constructing a superstructure, for which, the petitioner/appellant/accused has acted as a Supervisor and for which, the deceased had to pay the balance amount of Rs.2000/- to the petitioner/appellant/accused. On 14.04.2017, at about 5.45 p.m., the deceased Ganesan was informed to attend the forest fire and he took the assistance of the petitioner/appellant/accused who took the deceased in his two-wheeler [M.O.5] and on the way, they consumed alcohol and there was a wordy altercation as to the demand of the money by the petitioner/appellant/accused and as the deceased refused, the petitioner/appellant/accused got enraged by the same and decided to do away with the life of the deceased and also took a beer bottle and concealed it. On the same day, at about 8.45 p.m., the petitioner/appellant/accused stopped his two-wheeler and pushed the deceased down and thereafter, repeatedly stabbed the deceased by the use of beer bottle [M.O.2] and as a consequence, the deceased died. The FIR was lodged by P.W.1-Village Administrative Officer, of Ramapuram Village, based on which, the investigation commenced, which resulted in filing of the Charge Sheet before the Committal Court and the case was made over to the Trial Court by the Court of the Principal District Judge, Cuddalore District at Vridhachalam; and the Trial Court, upon consideration and appreciation of the oral and documentary evidence, has convicted and sentenced the petitioner/appellant/accused as stated above.

3 The primordial submission of the learned counsel for the petitioner/appellant/accused is that since the case of the prosecution rests upon the circumstantial evidence, the burden lies heavily on them to connect all the links in the chain of circumstances which unerringly point out the guilt on the part of the petitioner/appellant/accused and even as per the impugned judgment, the prosecution has failed to prove the motive. It is the further submission of the learned counsel that as to the last seen theory, the prosecution had examined the sons of the deceased, viz., P.Ws.3 and 4 as well as the close relative of the deceased viz., P.W6 and except the fact that the deceased and the petitioner/appellant/accused travelled together in a two-wheeler, nothing has been put forth to advance the case of the prosecution. The prosecution has also introduced the extra-judicial confession through the testimony of P.W.8 to fill up the gap and further pointed out that the reason for the deceased going to a particular spot, viz., as to the forest fire, has been spoken to by P.W.10 ; however, the statement of P.W.10 was recorded only on 01.08.2017 and in the light of the various infirmities, he would submit that the petitioner/appellant/accused is having bright chance of success in the appeal and hence, prays for suspension of the substantive

sentence of imprisonment imposed on the petitioner/appellant.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit the prosecution through the testimonies of P.Ws.3, 4, 6, 8 and 10, had established all links connecting the petitioner/appellant/accused with the commission of the crime and the Trial Court, on a proper appreciation of oral and documentary evidences, had rightly reached the conclusion to convict the accused and to impose the sentence as stated above 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 The Trial Court in the impugned judgment has recorded a finding that the motive for the commission of the offence has not been proved by the prosecution. It is to be noted at this juncture that in a case of circumstantial evidence, the motive plays a vital role and even the Trial Court has recorded a finding that the prosecution has failed to prove the motive. Insofar as the last seen theory is concerned, the sons of the deceased were examined as P.Ws.3 and 4 as well as P.W.6, the close relative of the deceased was also examined. All the witnesses have spoken to about the fact that the petitioner/appellant/accused took the deceased in his two-wheeler. It is also the case of the prosecution that the deceased sought the help of the petitioner/appellant/accused to take him to the spot where the forest fire emanated and therefore, the said fact has also been explained by the petitioner/appellant/accused in his answer to one of the incriminating questions put to him u/s.313(1)(b) Cr.P.C. as regards emanation of forest fire. P.W.10 has spoken to about the said fact and as rightly pointed out by the learned counsel for the petitioner/appellant/accused, though P.W.10 in his chief examination had deposed that he was summoned to Srimushnam Police Station on 15.04.2017, his statement u/s.161(3) Cr.P.C., was recorded only on 01.08.2017 and despite a specific question being put to the Investigating Officer, viz., P.W.18, he has failed to offer any plausible explanation. In the considered opinion of the Court, the above said infirmities would *prima facie* point out that the prosecution has failed to prove the chain of circumstances unerringly pointing out the guilt on the part of the petitioner/appellant/accused. In the light of the above facts and circumstances and the reasons assigned, this Court is of the considered view that this is a fit case wherein the substantive sentence of imprisonment imposed on the petitioner/appellant can be suspended.

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 the petitioner/appellant 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, No.II, Cuddalore at Vridhachalam and on further condition that the petitioner/appellant shall appear before the Committal Court, viz., the Court of Judicial Magistrate, No.II, Cuddalore at Vridhachalam [PRC No.26/2017], on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-

18/03/2019

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 JUDICIAL MAGISTRATE,
NO.II, CUDDALORE AT VRIDHACHALAM.

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CUDDALORE AT VRIDHACHALAM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
SRIMUSHNAM POLICE STATION,
CUDDALORE DISTRICT

+1C.C. to M/S.G.PUGAZHENTHI Advocate on payment of necessary charges SR NO.5583

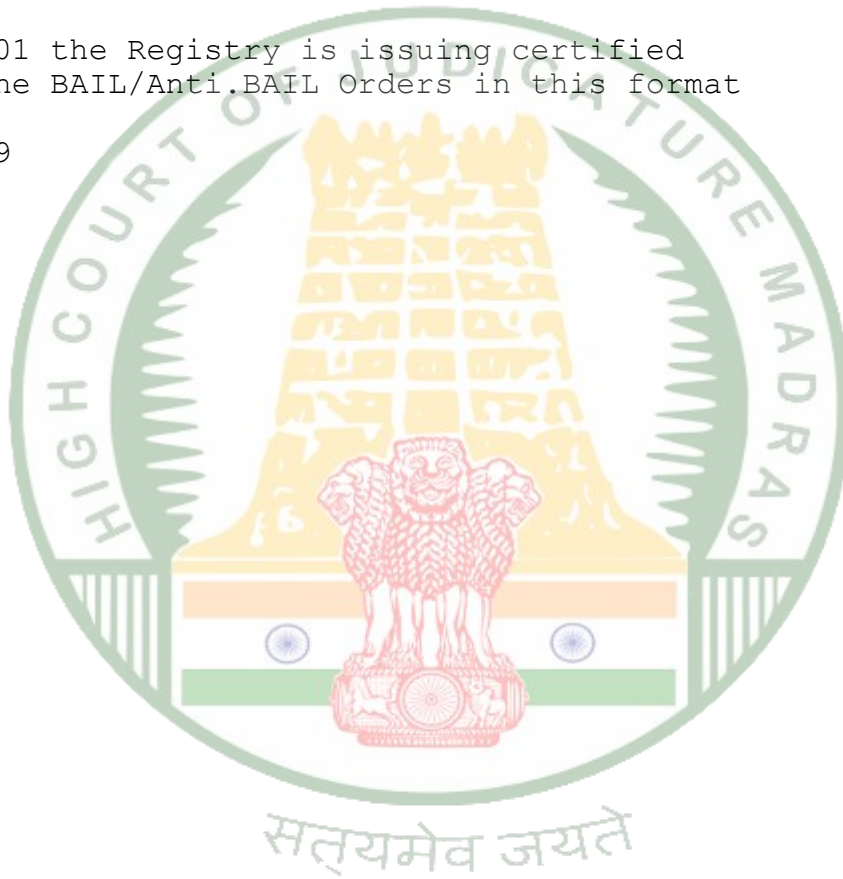
Order

in
CRL MP.2308/2019
in
CRL.A.93/2019

Date :18/03/2019

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MK:20/03/2019



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