

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Third day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.2773 of 2019

IN CRL.A.648 of 2018

JAGADEESHWARAN

[PETITIONER / ACCUSED]

Vs

THE STATE REP. BY ITS
THE INSPECTOR OF POLICE,
MELPADI POLICE STATION,
VELLORE DISTRICT.
(CR.NO.65 OF 2014)

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence of the 1st Appellant in connection with S.C.No.42 of 2017 on the file of the Learned Additional District and Sessions Judge, FTC, Vellore District dated 17.09.2018 enlarged him on bail pending disposal of the main Crl.A.648/2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.M.RAJENDIRAN, 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-1 out of 2 accused in SC.No.42/2017 on the file of the Court of Additional District and Sessions Judge, Fast Track Court, Vellore and vide impugned judgment dated 17.09.2018, the Trial Court had convicted him for the commission of the offence u/s.302 IPC and imposed with a sentence of rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 1 year rigorous imprisonment. A-2, who was tried along with the petitioner/appellant/A-1, was found guilty

for the commission of the offence u/s.304[Part I] IPC and was sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.2000/- with a default sentence of one year rigorous imprisonment. Challenging the conviction and sentence, the accused preferred the present appeal and pending disposal of the same, the substantive sentence of imprisonment imposed against A-2 was suspended by this Court vide order dated 26.11.2018 in Crl.MP.No.14192/2018 and the petitioner/1st appellant/A-1 came forward to file the present miscellaneous petition seeking suspension of substantive sentence of his imprisonment.

2 The learned counsel for the petitioner/appellant would submit that the motive for the commission of the offence is that one Kokila is the sister of the accused persons and she got married to one Devaraj and after marriage, there was a customary function to change the Mangalsutra and the said function was organised by the deceased Nagammal, who is the aunt of P.W.1 and enraged by the same, at about 11.30 a.m., on 12.06.2014, the accused went to the house of Nagammal and there was a wordy altercation and they also threatened her with dire consequences and thereafter, the deceased was taken to the house of P.W.1 and some time later, both accused has barged into the house of P.W.1 and hit her by using wooden logs and as a consequence, she died. The learned counsel for the petitioner/1st appellant/A-1 would submit that the sole eyewitness to the said occurrence is P.W.1 and in the light of the inconsistency between the chief examination and the cross-examination and further that there are very many infirmities and inconsistencies in the case projected by the prosecution, his chance of success in the appeal is bright and hence, prays for suspension of the substantive sentence of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that submit that the quality of the evidence alone counts and the testimony of P.W.1 has been amply corroborated by the scientific and other evidences and hence, prays for dismissal of the petition.

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

5 A perusal of the testimony of P.W.1 would disclose that his chief examination was in consonance with the complaint given by hm and in the cross examination, he would depose that after the demise of his aunt, he received the phone message and thereafter, he lodged the complaint on the same day and the accused had beat the deceased Nagammal and walked to some distance and thereafter, threw the stick. Learned counsel for the petitioner, pointing out the said portion, would submit that in the light of the testimony of P.W.1 in the cross-examination, he would not have been the eyewitness to the occurrence. However, this Court is not inclined to accept the said contention for the reason that PW.1 in the cross examination would categorically depose that the accused beat the deceased and went for a distance and thereafter, threw the stick which was used for the commission of the offence. The scientific and other evidences had

also established the case of the prosecution that the deceased died of homicidal violence. Though the learned counsel would submit that since the substantive sentence of imprisonment in respect of A-2 has been suspended, similar benevolence may also be shown to the petitioner/A-1 herein. However, this Court is not inclined to consider the said submission for the reason that A-2 was convicted for lesser offence and the points urged by the learned counsel for the petitioner requires appreciation of evidence and the same can be done only during the course of final hearing of the appeal. This Court, on a careful scrutiny of the entire materials, is prima facie of the view that this is not a fit case wherein suspension of substantive sentence of imprisonment can be granted.

6 In the result, the miscellaneous petition is dismissed.

-sd/-

03/04/2019

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 ADDITIONAL DISTRICT
AND SESSIONS JUDGE, FTC, VELLORE DISTRICT.

2 THE INSPECTOR OF POLICE,
MELPADI POLICE STATION,
VELLORE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

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

Order

in

CRL MP.2773/2019

in CRL.A.648/2018

Date :03/04/2019

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TA-15/04/2019

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