

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourth 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.11856 of 2018

IN CRL.A.NO.538 of 2018

SHEIK DAWOOD @ DAWOOD, [PETITIONER/APPELLANT/ACCUSED NO.2]

Vs

STATE REP. BY [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
THIRUNALLUR POLICE STATION,
PUDUCHERRY DISTRICT.
CR.NO. 90 OF 2017.

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 imprisonment passed on 24.08.2018 against the petitioner in S.C.No. 6 of 2017 on the file of Sessions Judge, Karaikal and enlarge him on bail pending disposal of C.A.No.538 of 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.K.V.SRIDHARAN, Advocate for the petitioner, and of MR. V.BALAMURUGANE, Additional Public Prosecutor for Puducherry. on behalf of the Respondents the court made the following order:-

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

The petitioner is arrayed as A2 out of 2 accused in SC.No.6/2017 and he along with A-1, viz., Marimuthu @ Dinesh, were prosecuted for the commission of the offences u/s.364, 341, 302 and 392 read with 34 IPC and the Trial Court, viz., the Court of Sessions Judge, Karaikal, vide impugned judgment dated 24.08.2018, had acquitted both the accused of the offences u/s.364, 341, 392 read with 34 IPC and however, had convicted the accused for the commission of the offence

u/s.302 IPC and sentenced each of them to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each, with a default sentence of 6 months simple imprisonment. The State, so far, has not filed any appeal challenging the acquittal of both the accused in respect of the rest of the charges. Challenging the said conviction and sentence, the petitioner/appellant/A-2 preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 Mr.K.V.Sridharan, learned counsel appearing for the petitioner/appellant/A-2 has invited the attention of this Court to the impugned Judgment and would submit that admittedly, the prosecution case rests upon the circumstantial evidence and according to the prosecution, the deceased went to see cinema and PW5 was also present to see the show and after the show was over, he saw both the accused taking the deceased in their two-wheeler and thereafter, he was found murdered and P.W.4-Watchman has spoken about the fact of the deceased seeing cinema and though CCTV Footage was marked as M.O.19, the same has not been subjected to compliance under section 65-B of the Evidence Act and in the absence of the same, the last seen theory spoken to by the prosecution, has not been established. It is also contended by the learned counsel for the petitioner/appellant/A-2 that on committing the murder, the accused are said to have taken a sum of Rs.5400/- from the deceased and as per the testimony of P.W.22, the Bank Manager coupled with Ex.P.17-bank statement, the deceased was having the bank balance of only Rs.55/- and as such, the prosecution has miserably failed to prove the fact that the deceased was in possession of Rs.5400/- and admittedly, the Test Identification Parade was conducted only on 11.08.2018, wherein PW5 said to have identified both the assailants and the defence was also taken that before conducting the identification parade, identity of both accused was shown to P.W.5. In sum and substance, it is the submission of the learned counsel for the petitioner/appellant/A-2 that even for the sake of arguments that the prosecution was able to prove the homicidal nature of the offence and the recovery, the vital links, viz., motive, last seen theory as well as the capability of the deceased to possess such a huge sum, have not been proved by the prosecution and as such, the petitioner is having a bright chance of success in this appeal and hence, prays and prays for suspension of the sentence.

3 *Per contra*, Mr.Balamurugane, learned Additional Public Prosecutor [Puducherry] appearing for the State would submit that the petitioner/appellant/A-2 is having antecedents in the form of two previous cases and though in one case, he has been acquitted, he is facing trial for the commission of the offence u/s.326 IPC in another case and the prosecution, through the oral and documentary evidences, had proved the chain of circumstances pointing out the guilt on the part of the petitioner/appellant/A-2 beyond any reasonable doubt and the Trial Court, on correct and proper appreciation of the oral and documentary evidences, has rightly reached the conclusion to convict and sentence the petitioner/appellant/A-2 and prays for dismissal of this petition.

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

5 The motive for the commission of the offence as projected by the prosecution is that A-1 and A-2 took a decision to do away with the life of the deceased for the purpose of taking a sum of Rs.5000/-. P.W.22-Bank Manager, has spoken about the maintenance of the account by the deceased in their Bank and also through him, Ex.P.17-Bank Statement came to be marked and it would disclose that the deceased, at the time of the alleged occurrence, was having the bank balance of Rs.55/- and the prosecution did not let in any evidence as to how the deceased came into possession of Rs.5400/-. The vital link projected by the prosecution is with regard to the last seen theory said to have been spoken to by P.W5 and also marked CCTV Footage as M.O.19 and admittedly, the mandatory requirement of compliance u/s.65-B of the Evidence Act, has not been adhered to. Though the prosecution was able to prove that the deceased died of homicidal

violence coupled with the recovery of the incriminating articles, the other vital links *prima facie* appears to have not been proved by the prosecution. It is to be remembered at this juncture that the case of the prosecution rests upon the circumstantial evidence and therefore, they are under obligation to connect all the links connecting the petitioner/appellant/A-2 with the commission of the offence. It *prima facie* appears that the prosecution has failed to do so. In the light of the above facts and circumstances, this court is inclined to suspend the substantive sentence of imprisonment imposed against the petitioner/appellant/A-2 alone pending disposal of the appeal.

6 In the result, the petition is **ordered** and the substantive sentence of imprisonment alone in respect of the petitioner/appellant/A-2 is suspended and the petitioner/appellant/A-2 directed to be enlarged on bail on condition that the petitioner/appellant/A-2 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, Karaikal and on further condition that the petitioner/appellant/A-2 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, No.2, Karaikal, [PRC No.8/2017] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-

04/04/2019

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

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TO

1 THE SESSIONS JUDGE,
KARAIKAL

2 THE JUDICIAL MAGISTRATE,
NO.II, KARAIKAL.

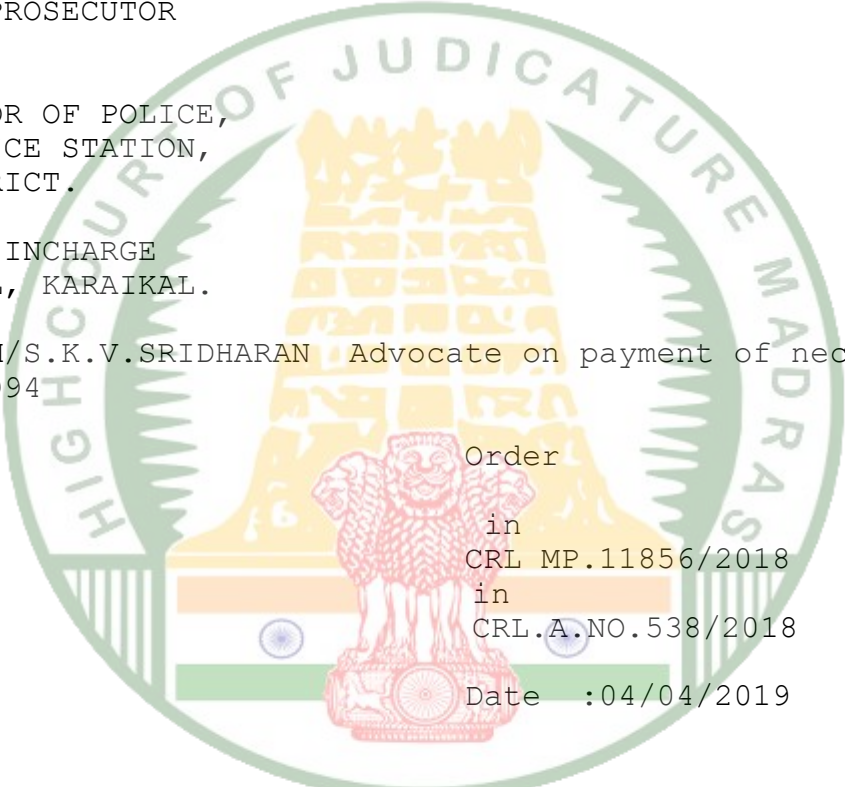
3 THE CHIEF JUDICIAL MAGISTRATE
PUDUCHERRY. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
PUDUCHERRY.

4 THE INSPECTOR OF POLICE,
THIRUNALLUR POLICE STATION,
PUDUCHERRY DISTRICT.

5 THE OFFICER INCHARGE
SPECIAL SUB-JAIL, KARAIKAL.

+1 C.C. to M/S.K.V.SRIDHARAN Advocate on payment of necessary
charges SR.NO.6994



Order
in
CRL MP.11856/2018
in
CRL.A.NO.538/2018
Date :04/04/2019

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