

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twelfth 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.4682 of 2019

in CRL.A.No.154 of 2019

RAJA @ RAJASEKARAN

[PETITIONER/APELLANT]

Vs

THE INSPECTOR OF POLICE
BHUVANAGIRI POLICE STATION,
CUDDALORE DISTRICT.
CRIME NO.12 OF 2016

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.154 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment passed in S.C No.122/2016 dated 05/03/2019 on the file of II Additional District Sessions Judge, Chidambaram and enlarge him on bail, pending disposal of CA No.154 of 2019 filed before this Honourable Court

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.154 of 2019 on the file of the High Court and upon hearing the arguments of M/S.K.V.SRIDHARAN, Advocate for the petitioner and of MR. C.IYYAPPARAJ ADDL.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.122/2016 on the file of the Court of II Additional Sessions Judge, Chidambaram and vide impugned judgment dated 05.03.2019, he was convicted for the commission of the offence u/s.302 IPC [2 counts] for having committed the murder of one Sathish and Manikandan on 19.01.2016 at night hours and was to undergo rigorous imprisonment for life and to

pay a fine of Rs.5000/- with a default sentence of 6 month simple imprisonment for each count. The sentences were ordered to run concurrently and set-off was also granted to him 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 sentences of imprisonment.

2 Mr.K.V.Sridharan, learned counsel appearing for the petitioner/appellant has drawn the attention of this Court to the testimonies of the material witnesses, viz., P.Ws.11 and 12 and the impugned judgment and would submit that the petitioner/appellant had developed acquaintance with P.W.15 who subsequently got married to Sathish [Deceased No.1] by way of love marriage and therefore, the petitioner/appellant decided to do away with the life of the deceased Sathish and under the guise of partying him with a liquor bottle, took him along with his friend Manikandan on the night hours on 19.01.2016 and his intention was to mix cyanide in the liquor and administered the same to Sathish and since the friend of Sathish, viz., Manikandan, was also present, the cyanide mixed liquor, was also given to him and on consumption, they died on account of the effects of the cyanide.

3 The primordial submission of the learned counsel for the petitioner/appellant is that the case of the prosecution rests upon the circumstantial evidence and the only link connecting the petitioner/appellant with the commission of the crime is the testimonies P.Ws.11 and 12 who is said to have seen both the deceased persons in the company of the petitioner/appellant on the night hours on 19.01.2016. Further attention of this Court was also drawn to the testimonies of the said witnesses and stated that as regard to their presence and seeing the petitioner/appellant in the company of the deceased persons, there were very many improvements in their testimonies from that of their statements recorded u/s.161[3] Cr.P.C., and material contradictions have also been elicited from them and it was also put to the Investigating Officer-P.W.29 and that apart, there is also a major discrepancy as to the date on which the statements were recorded from the said witnesses, viz., whether it was on 25.01.2016 or 29.01.2016? and admittedly, despite on the very next day, both the witnesses became aware as to the cause of death of the deceased persons, they did not disclose the fact to the police till they were examined and there was some delay in despatching the statements to the jurisdictional Court also and in the light of the said discrepancy, the learned counsel for the petitioner/appellant would state that the petitioner/appellant is having a bright chance of success in this appeal and hence, prays for suspension of the substantive sentences of imprisonment.

4 *Per contra*, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State would submit that the prosecution was able to link all the chain of circumstances with the commission of the offence on the part of the petitioner/appellant and the points urged by the learned counsel for the petitioner/appellant can be appreciated only at the time of advancing final arguments in the appeal and prays for dismissal of this petition.

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

6 This Court has also gone through the testimonies of P.Ws.11 and 12 as well as P.W.29-the Investigating Officer and *prima facie* finds that there is a vital discrepancy and contradiction in their testimonies from that of their statements recorded u/s.161[3] Cr.P.C. Insofar as P.W.11 is concerned, there is a discrepancy and improvement in his testimony, as to the purpose for which he was said to have been present on the night hours on 19.01.2016 and according to P.W.12, he had seen the petitioner/appellant in the company of both the deceased through the light emanated from the headlight of the motorcycle and the said fact has not been disclosed by him while he was examined by the police and that apart, there is a doubt as to when their statements were recorded, whether it was on 25.01.2016 or 29.01.2016? and the said statements had also belatedly reached the jurisdictional Court, for which no explanation has been offered. No doubt, both the deceased died on account of the effects of cyanide. It is to be remembered at this juncture that the case of the prosecution rests upon the circumstantial evidence and therefore, the prosecution is under obligation to connect all links in the chain of circumstances in a complete form to the petitioner/appellant and it *prima facie* appears that there are very many gaping holes in the case projected by the prosecution. Hence, this Court, is considered of the view that the petitioner/appellant is entitled for suspension of the substantive sentences of imprisonment pending this appeal.

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 District Munsif cum Judicial Magistrate, Parangipettai and on further condition that the petitioner/appellant shall appear before the Committal Court, viz., the Court of District Munsif cum Judicial

Magistrate, Parangipettai [PRC.No.4/2016] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-
12/04/2019

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 DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
PARANGIPETTAI

2 THE II ADDITIONAL DISTRICT SESSIONS JUDGE,
CHIDAMBARAM

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

5 THE INSPECTOR OF POLICE
BHUVANAGIRI POLICE STATION,
CUDDALORE DISTRICT

+1 C.C. to M/S.K.V.SRIDHARAN Advocate on payment of necessary charges SR.NO.7701

Order

in
CRL MP.4682/2019
in
CRL.A.No.154/2019

Date :12/04/2019

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