

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Saturday, the Twenty Seventh 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.5123 of 2019

in CRL.A.No.209 of 2019

B.ELAYARAJA

[PETITIONER / APPELLANT]

Vs

STATE BY

[RESPONDENT]

THE STATION HOUSE OFFICER,
KALLAKURICHI POLICE STATION,
VILLUPURAM DISTRICT.
CRIME NO.363 OF 2017.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.209 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in S.C.No.96 of 2018 on the file of the III Additional District and Sessions Court, Kallakurichi, Villupuram District, dated 22.02.2019 and release him on bail pending disposal of the above CRL.A.No.209 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.209 of 2019 on the file of the High Court and upon hearing the arguments of M/S.R.PRABUDOSS 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, viz., B.Elayaraja, son of Benjamin, is arrayed as A-5 out of 8 accused in SC.No.96/2018 on the file of the Court of II Additional District and Sessions Judge, Kallakurichi. It is brought to the knowledge of this Court that pending questioning u/s.313[1] Cr.P.C., A-4, viz., Kumar, died and A-6, viz., Benjamin, died after filing of the Final Report. The Trial Court framed the following charges:-

A-1 to A-6	120-B IPC
A-7	120-B r/w 302 IPC
A-1 & A-2	449 IPC
A-2, A-4 & A-5	148 IPC
A-3 & A-6	147 IPC
A-1 to A-3 & A-6	364 IPC
A-1 to A-6	386 IPC
A-1, A-2 & A-5	302 IPC
A-3, A-4 & A-6	302 r/w 149 IPC
A-1 to A-5 & A-7	201 r/w 302 IPC.

The petitioner/appellant/A-5 was found guilty for the commission of the offences u/s.120-B, 148, 386, 302, 201 r/w 302 IPC and was sentenced to imprisonment vide impugned judgment dated 22.02.2019 as follows:-

Rank of the Accused	Conviction u/s.	Sentence awarded
A-5	120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 1 month simple imprisonment.
	148 IPC	To undergo 3 years rigorous imprisonment
	386 IPC	To undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of 1 month simple imprisonment.
	302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 1 month simple imprisonment.
	201 r/w 302 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of 1 month simple imprisonment.

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the petitioner/appellant/A-5 preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentences of imprisonment.

2 The learned counsel for the petitioner/appellant/A-5 would submit that the motive for the offence is that Benjamin [A-6] was born to the second wife of Joseph @ Chinnapayan / grandfather of the deceased Joseph Rathinakumar and one Samuel, father of the deceased was born to the first wife of the said Joseph @ Chinnapayan and there existed property dispute between the families of Benjamin [A-6] and

Samuel in respect of 2 acres of land at Karunapuram, - Siruvangoor Road and the said dispute was going on for 24 years and as and when the sons of A-6 [Benjamin], viz., A-1, A-4 and A-5 [petitioner herein] used to meet the deceased, they used to warn him that even if the case/suit ends in favour of the deceased Joseph Rathinakumar, he will be finished off and the property would belong to them. Benjamin [since deceased accused] was also instigating his sons to do the same. Further, according to the prosecution, on 06.05.2017, at about 9.00 p.m., when A-1 to A-5 and A-8 were consuming liquor, at that juncture, Benjamin came and informed them that nobody is there in Joseph Rathinakumar's house except him and asked them to get the document for getting the property and if Joseph Rathinakumar fails to do so, he instigated them to finish him off and accordingly, A-1 to A-6 and A-8 conspired to do the commission of the offence and the said fact was also disclosed by A-1 to his wife/A-7 and A-7 told A-1 that enough is enough and finish him off. In order to execute the conspiracy, on 07.05.2017 at about 4.00 p.m., A-1 and A-2 travelled in an auto belong to A-3 and proceeded to the house of Joseph Rathinakumar and A-3 was waiting in the auto and A-1 and A-2 armed with wooden logs, barged into the house of Joseph Rathinakumar and asked the deceased to execute the document conveying the property to them and once, it was refused, the deceased was attacked and he came out of the house and started running and A-1 and A-2 chased him and pulled him inside the auto and near Kallakurichi Court Complex, A-1 got down and Joseph Rathinakumar, raised alarm and A-2 threatened him. A-2 and A-3 once again took the deceased in the auto and the petitioner/appellant/A-5 was following in a two-wheeler and near Komugi River on the northern side near Perumal temple, the auto was halted and A-4 and A-7 were also present and once again, they threatened the deceased to execute the document conveying the property and as the deceased refused, the petitioner/appellant/A-5 attacked him with wooden log on the head, left side of the back as well as on the stomach ; A-2 strangled the neck of the deceased ; A-1 attacked him on the hip while A-4 attacked the deceased with the wooden log on the knee and as a consequence of the injuries sustained, Joseph Rathinakumar breathed his last.

3 The primordial submission made by the learned counsel appearing for the petitioner/appellant/A-5 is that admittedly, the case of the prosecution rests upon the circumstantial evidence and except the alleged arrest, confession and recovery pursuant to the admissible portion of the confession statement of the petitioner/appellant/A-5, none of the witnesses had spoken about the presence of the petitioner/appellant/A-5 lastly in the company of the deceased. The witnesses as to the last seen theory, viz., P.Ws.19 and 20, are of no help to the prosecution and P.Ws.12 and 17 who have supposed to have spoken about the last seen theory, have turned hostile and since the petitioner/appellant/A-5 is having a bright chance of success in this appeal, prays for suspension of the substantive sentences of imprisonment.

4 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the prosecution was able to prove the chain of circumstances pointing guilty of the petitioner/appellant/A-5 with the commission of crime beyond reasonable doubt 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 Though the evidences tendered by the prosecution through P.Ws.1, 2, 4 and 5, would *prima facie* disclose as to the motive for the commission of the offence, it is to be remembered at this juncture that the case of the prosecution rests upon circumstantial evidence and therefore, it is obligatory on the part of the prosecution to connect all links in the chain of events pointing out the guilt on the part of the petitioner/appellant/A-5 with regard to the fatal overt act attributed to him and in the considered opinion of the Court, the prosecution *pria facie* appears to have failed in its endeavour for the reason that except arrest, confession and recovery in pursuant to the admissible portion of the confession statement, the material witnesses did not speak about the petitioner/appellant/A-5 lastly in the company of the other accused and as to the overt act attributed against the petitioner/appellant/A-5. In the light of the above facts and circumstances, this Court is of the view that the petitioner/appellant/A-5 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/A-5 is suspended and the petitioner/appellant/A-5 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.I, Kallakurichi and on further condition that the petitioner/appellant/A-7 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, No.1, Kallakurichi [PRC.No.26/2017] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

-sd/-

27/04/2019

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 JUDICIAL MAGISTRATE NO.I
KALLKURICHI,
VILLUPURAM DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM [FOR INFORMATION]

3 THE III ADDITIOANL DISTRICT AND SESSIONS JUDGE,
KALLAKURICHI,
VILLUPURAM DISTRICT

4 THE SUPERINTENDENT,
CENTRAL PRISON,
CUDDALORE

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS

6 THE STATION HOUSE OFFICER,
KALLAKURICHI POLICE STATION,
VILLUPURAM DISTRICT

+1 C.C. to M/S.R.PRABUDOSS Advocate on payment of necessary
charges SR.NO.8695

Order

in

CRL MP.5123/2019

in

CRL.A.No.209/2019

Date :27/04/2019

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