

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Sixteenth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION NO.5584 OF 2019

IN CRL.A.NO.232 OF 2019

ARAVINDAN

[APPELLANT / SINGLE ACCUSED]

Vs

STATE REPRESENTED BY,
THE INSPECTOR OF POLICE,
DHARMAPURI POLICE STATION,
DHARMAPURI DISTRICT.
CR.NO.406 OF 2016

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.232 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the learned Honourable Additional Sessions Judge, Dharmapuri in S.C.No.69/2017 dated 28.03.2019 against the petitioner and enlarge the petitioner on bail pending disposal of the CRL.A.NO.232 OF 2019 [IN CRL.MP.NO.5584 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.232 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.V.RAJAMOHAN, 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.M.SUNDRESH,J)

The petitioner is the sole accused in S.C.No.69 of 2017. He has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment. Seeking to suspend the sentence, the present petition has been filed.

2.The case of the prosecution is that there was a prior motive. As the petitioner was informed by his mother that his father was done away with by the accused years ago. P.W.3 has informed P.W.1

who is the author of the complaint under Ex.P1 that the deceased was attacked and killed by some persons. P.Ws.6 to 8 are the witnesses who spoke about the last seen theory.

3.Learned counsel appearing for the petitioner submitted that the evidence of P.Ws.6 to 8 are unnatural and they are known witnesses. They were actually drinking according to the prosecution. There is no reason as to why they have not either informed P.W.1 or police immediately after the occurrence. They have also deposed that they could not see properly from a distance. Their examination was also done belatedly though they were present. Thus, the link has not been properly established to implicate the petitioner. Hence the sentence will have to be suspended.

4.The learned Additional Public Prosecutor appearing for the State would submit that the trial Court took into consideration the evidence of P.Ws.6 to 8 coupled with the evidence of P.Ws.1 to 3 and rendered conviction. The recording was also made pursuant to the confession statement. Hence the petition will have to be dismissed.

5.The petitioner is in incarceration from 28.03.2019. We are dealing with the case of circumstantial evidence. Mere last seen theory by itself cannot be a sole factor. P.Ws.6 to 8 though stated to have seen the petitioner and the deceased prior to the occurrence and thereafter the petitioner running from the scene of occurrence, for the reasons known to them, did not inform the same either to the police or to P.W.1, particularly when they have seen the dead body. We also find that the occurrence was during the night time. There is no evidence given about the sufficiency of the light so as to accept P.Ws.6 to 8 to see the occurrence clearly. In fact, they have stated that they could not see the occurrence clearly. Even, according to the prosecution, they were drinking.

6.Considering the above, we are of the view that there are arguable points involved in the appeal. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes 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 Judicial Magistrate No.I, Dharmapuri and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

16/07/2019

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, DHARMAPURI.

2 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI [FOR INFORMATION]

3 THE ADDITIONAL SESSIONS JUDGE,
DHARMAPURI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE
DHARMAPURI POLICE STATION,
DHARMAPURI DISTRICT.

+1C.C. to M/S.V.RAJAMOHAN Advocate on payment of necessary
charges SR NO.14464

Order

in
CRL MP.5584/2019
IN CRL.A.NO.232/2019

Date :16/07/2019

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MK:16/07/2019

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