

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Thirtieth 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.6096 of 2019

IN

CRL.A.NO.369 OF 2018

1 GOPALAKRISHNAN

[APPELLANTS / ACCUSED]

2 YASOTHA

Vs

STATE BY,

[RESPONDENT]

INSPECTOR OF POLICE,
ERODE TALUK POLICE STATION,
ERODE DISTRICT.
CR.NO.692 OF 2012

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.369 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the II Additional District Sessions Judge, Erode by its judgment dated 05.12.2017 made in S.C.No.96 of 2015 and enlarge the petitioners on bail pending disposal of the above CRL.A.NO.369 OF 2018 [IN CRL.MP.NO.6096 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.369 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.B.MOHAN, 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.]

This is the second petition seeking suspension of substantive sentence of imprisonment. On an earlier occasion, A1 to A3 had filed Crl.M.P.No.8714 of 2018 praying for the very same relief and the earlier Bench of this Court had taken into consideration the merits of the case and informed its inclination to dismiss the Miscellaneous Petition seeking suspension of sentence.

2. The learned counsel for the petitioners / appellants sought time for getting instructions for withdrawal of the miscellaneous petition and accordingly it was listed for hearing on 04.09.2018 and on that day, it was represented by the learned counsel that he is no more on record in that case having acceded to the change of vakalat, and therefore, sought for time. However, the prayer was not entertained and the miscellaneous petition was dismissed.

3. A-2 and A3 in S.C.No.96 of 2015 on the file of the Court of II Additional Sessions Judge, Erode are the appellants 2 and 3 in C.A.No.369 of 2019 and the petitioners herein. The Trial Court vide impugned judgment dated 05.12.2017 has convicted and sentenced A1 to A3 as follows:

(i) Under Section 302 IPC, A1 and A2 were sentenced to undergo Rigorous imprisonment for life and to pay a fine of Rs.10,000/- with a default sentence of one year Simple Imprisonment.

(ii) A-3 was convicted for the offences under Sections 380 and 302 r/w 34 IPC and was sentenced to undergo Rigorous imprisonment for life and fine of Rs.10,000/- with a default sentence of one year Simple Imprisonment for the commission of the offence u/s.302 r/w 34 IPC and to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- with a default to undergo 1 month simple imprisonment for the commission of the offence u/s.380 IPC.

(iii) A-1 and A-2 were convicted for the offences under Section 380 IPC and each of them were sentenced to undergo one year Rigorous Imprisonment, and to pay a fine of Rs.1,000/- each with a default sentence of one month Simple Imprisonment.

(iv) A-1 was convicted under Section 302 r/w 201 IPC and was sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- with a default sentence of 1 month Simple Imprisonment.

The Trial Court directed the sentences of imprisonment to run concurrently and also granted set off under Section 428 Cr.P.C and challenging the conviction and sentence, A1 to A3 has filed the present appeal and pending disposal of the same, A2 and A3 prays for suspension of substantive sentence of imprisonment.

4. Mr.B.Mohan, learned counsel appearing for the petitioners / A2 and A3 would submit that A1 is the wife of the deceased Srinivasan. A2 is her Brother in law and A3 is the elder sister of A1 and the deceased Srinivasan suffered due to orthopedic ailment and he was unable to use his hands and legs right from the young age. He was otherwise disabled and out of wedlock between A1 and deceased Srinivasan, a male and two female children were born and A1, deceased Srinivasan and her parents viz., P.W.s 1 and 5 were living as joint family and the deceased Srinivasan used to give his entire salary to his parents and not to the interest of A1 and

therefore, there was some quarrel between the deceased Srinivasan and A1 and therefore, A1 went to the parental home and stayed with her sister / A3. Thereafter, A1 was pacified and brought to the matrimonial home. The deceased Srinivasan insisted that his wife/A-1 should ask sorry by falling into the feet of his mother / P.W.5 and accordingly it was done and A1 was furious by the said acts. It is further stated by the learned counsel for the petitioners that at about 10.00 a.m, P.W.s.1 and 5 leaving the deceased Srinivasan, and along with elder grand daughter, proceeded to attend the marriage of their relatives and according to the prosecution, at about 6.15 p.m on 17.11.2012, A2 and A3 came in a motor cycle (M.O.2) and went inside the house of A1. A3 was standing outside to make a watch and A2 for the purpose of murdering Srinivasan, switched off the main and went with the spanner and A1 switched off the UPS and tried to murder the deceased Srinivasan by using pillow and when it was resisted, A2 repeatedly attacked with iron spanner (M.O.1) and as a consequence, Srinivasan died on account of asphyxia and grievous injuries sustained. A1 took five sovereigns of gold chain, 10 sovereigns of gold coins and also 6 ½ sovereigns of gold bars and put it inside M.O.7 (yellow bag) and handed over to A2, who came outside and handed over the same to A3 and in order to screen the occurrence, A1 contacted co-employees of deceased viz., Mr.Kathirvel / P.W.2 and Dr.Ponmalar / P.W.3 and uncle of Srinivasan / P.W.4 and informed that the deceased Srinivasan was murdered by some persons, who spoken in Hindi.

5. The primordial submission made by the learned counsel for the petitioners / A2 and A3 is that admittedly, the case of the prosecution rests upon circumstantial evidence. The Trial Court has wrongfully cast burden upon the petitioners, who are not admittedly present in the scene of occurrence and would further add that the statements of the witnesses P.W.s 6 and 7, who said to have lastly seen A2 and A3 near the house of A1 would show about the possession of yellow bag at the hands of A2 and handing over the same to A3. Admittedly, P.W.s 6 and 7 are closely related to P.W.s 1 and 5 and therefore, their testimonies cannot be relied upon. It is the further submission of the learned counsel for the petitioners/A-2 and A-3 that except arrest, confession and recovery as spoken to by P.W.10, there are no other incriminating materials to connect the accused with the commission of the offences. Since the case of the prosecution is bristled with very many inconsistencies and infirmities, the Trial court ought to have awarded benefit of doubt. Since the chance of success is very bright in the Criminal Appeal, prays for suspension of substantive sentence of imprisonment.

6. *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the motive for the commission of offence has been spoken to by P.W.s 1 and 5, parents of the deceased. Though it is the version of A1 that the persons threw chilli powder and also snatched the mangalsutra, P.Ws.2 and 3 co-employees of deceased saw magalsutra in the neck of A1 and they were not addressed that A1 was sprinkled with chilli powder and the said fact has been spoken to by P.W.4, co-brother of P.W.1. P.Ws.6 and 7 have seen the riding of motorcycle by A2 and

stopping of the same before the house of A1. It is further seen that A2 went inside the house of the deceased, thereafter came back and handover the yellow bag to the A3.

7. It is also the submission of the learned Additional Public Prosecutor that P.W.10 has spoken about the arrest of A2 and A3 and recovery of M.O.1 Spanner and Motorbike. Pursuant to the admissible portion of A2 and A3, recovered golden articles and since, prosecution was successful in completing the chain of circumstances, clearly pointing out the guilt on their portion, prays for dismissal of this petition.

8. This Court paid its best attention to the rival submission and also perused the materials placed before it.

9. The case of the prosecution rests upon circumstantial evidence and motive aspect has been spoken to by P.Ws.1 and 5. Immediately after the commission of murder, A1 has contacted P.W.s 2, 3 and 4 and though, she tell them that some persons spoken in Hindi and had attacked her husband by sprinkling Chilli powder of her face and took out the mangalsutra, they found mangalsutra worn by A1, one of the articles recovered pursuant to admissible portion of the confession statement A3. P.Ws.6 and 7 as to the fact of riding of motorcycle by A2 accompanied by A3 and going inside the house and immediately thereafter, coming out and handing over the yellow bag, said to have contained the articles stolen, in the considered opinion of this Court, it prima facie appears that prosecution was able to complete the chain of circumstances who pointed out the guilt on the part of the A2 and A3. Though the learned counsel for the petitioners / appellants / A2 and A3 made an attempt to draw the attention of this Court to testimonies of witnesses and argue on the merits of the very appeal itself, this Court is of the considered view that at this juncture, testimonies of witnesses cannot be appreciated and it prima facie appears that the prosecution through the testimonies of other side witnesses coupled with the recovery of incriminating articles was able to prove the guilt on the part of these petitioners also. Therefore, this Court is of the considered view that this is not a fit case for grant of suspension of substantive sentence of imprisonment and the points urged by the learned counsel for the petitioners / appellants 2 and 3 can be considered only at the time of final hearing of this appeal. On an earlier occasion, these petitioners along with A1, prayed for suspension of substantive sentence of imprisonment, the earlier Bench of this Court also expressed the similar view and dismissed the petition.

10. Therefore, this Criminal Miscellaneous Petition is dismissed.

-sd/-
30/04/2019

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 II ADDITIONAL DISTRICT
SESSIONS JUDGE, ERODE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
ERODE TALUK POLICE STATION,
ERODE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

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

Order

in
CRL MP.6096/2019

in
CRL A.369/2018

Date :30/04/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:04/06/2019