

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Eleventh 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.4142 of 2018

IN CRL.A.NO.172 of 2018

ANBARASAN @ CHINNAMANI @ MANI [PETITIONER/APELLANT]

Vs

STATE OF TAMILNADU REPRESENTED BY [RESPONDENT]
THE INSPECTOR OF POLICE,
B-6, PEELAMEDU POLICE STATION,
COIMBATORE DISTRICT.
CR.NO.603 OF 2012.

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 imposed in Judgment dated 25.11.2013 made in S.C.No.33 of 2013 on the file of the Court of the Principal Sessions Judge, Coimbatore, Pending Crl.A.No.172 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.R.CHAKKARAVARTHY, 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 is the sole accused in S.C.No.33 of 2013 on the file of the Court of the Principal Sessions Judge, Coimbatore and vide judgment dated 25.11.2013, he was found guilty for the commission of offence under Sections 302 IPC (2 counts) and imposed with Rigorous Imprisonment of Life for each count with a fine of Rs.10,000/- for each count and in default to undergo Rigorous Imprisonment of 6 months and the life sentences awarded were ordered to run concurrently and set off was also granted under Section 428 Cr.P.C. The petitioner / appellant, challenging the impugned

conviction and sentence passed against him, had filed this appeal and pending disposal of the same, prays for suspension of sentence.

2. Mr.R.Chakkaravarthy, learned counsel appearing for the petitioner/appellant/accused would submit that the case of the prosecution rests upon circumstantial evidence and the motive aspect projected by the prosecution is that the petitioner / appellant had some altercation with the deceased No.1 viz.,Elangovan, who was a Watchman and the altercation between the deceased No.1 and the accused was also spoken to by P.W.7, viz, Narayana Reddy, who was the owner of the site and admittedly, the prosecution did not collect any evidence as to the ownership of the site owned by P.W.7. It is the further submission of the learned counsel for the petitioner that the scene of occurrence has been spoken to by P.W.4 / Lorry Driver and P.W.5 / Loadman. It has been admitted by the Investigating Officer that he did not collect any material as to the bringing of the sand to the site by P.W.4 and unloading of the same by P.W.5. Admittedly, the occurrence took place on the night hours and in the absence of availability of light, they did not identify the accused at the spot at the relevant point of time. The learned counsel for the petitioner by drawing attention of this Court to the Serology Report would submit that as per the Serology Report, weapon said to have contained human blood, however, no investigation has been done as to the blood group of both the deceased and the arrest, recovery and confession is also highly doubtful and in the light of the very many inconsistencies and infirmities, the chain of circumstances projected by the prosecution is not complete and his chance of success is bright in the Criminal Appeal and hence, prays for suspension of substantive sentence of imprisonment.

3. *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the motive aspect has been clearly spoken to by the witnesses especially P.W.7 owner of the site, namely Narayana Reddy and P.W.s 4 and 5 had spoken about the fact that since they used to deliver sand for that site, they knew the accused / petitioner and the said portion of the testimonies has not been subjected to any test in the cross examination and as to the availability of light, P.W.22 was also examined. It is also pointed out by the learned Additional Public Prosecutor that the accused was arrested in connection with the earlier case registered by Kumbakonam West Police Station, pertaining to possession of explosive substances and in the said case, the petitioner / appellant was arrested and he voluntarily came forward to give confession statement and the admissible portion of the confession statement led to the discovery of the fact involved in the present case and the said witness, except his mere suggestion, nothing useful has been elicited in favour of the appellant / accused. P.W.6 who was nominated to conduct the investigation has also spoken about the arrest of the petitioner / appellant on 29.04.2012 in the Explosive Substance case and on his confession statement, incriminating articles were seized, but he has not been subjected to any cross examination and in the light of the

overwhelming materials, the trial Court has rightly reached the conclusion to convict and sentence the appellant / accused and prays for dismissal of this petition.

4.This Court has considered the rival submission and also perused the material placed in the form of typed set of documents.

5. The motive for the commission of offences is that the petitioner / appellant is employed as mason in the construction site of P.W.7 and he used to quarrel with the deceased No.1/Elangovan and he is also a drunkard and when it has been castigated by deceased No.1, he developed animosity and with an intention appellant / accused killed the deceased no.1 and since it was witnessed by co-watchman, deceased No.2/Ramasamy, he was also attacked and killed. P.W.7 has spoken about the fact of wordy altercation between the petitioner / appellant and the deceased no.1 / Elangovan on 19.08.2012 at about 05.30 p.m and also efforts made by him to pacify them and P.W.4/Lorry driver and P.W.5/Loadman who delivered sand, in the site in their deposition, would depose that as and when the load of sand is delivered, the petitioner / appellant being a mason, used to check the quality of the sand but on that day, he silently went of. Thereafter, when they went to inform the watchman about the delivery of the sand, both the deceased lying in the pool of blood and thereafter, a complaint came to be lodged. Even in their cross examination, they specifically deposed about the clear identity of the petitioner / appellant. As rightly pointed out by the learned Additional Public Prosecutor, the petitioner / appellant was arrested in connection with the case registered by Kumbakonam Police Station, which pertains to Explosive Substance Act and as per the testimony of P.W.7, he voluntarily came forward to give a confession statement, which led by discovery of the fact involved in the present case and he has not been subjected to any cross examination. Though it is urged by the learned counsel for the petitioner/appellant as to the discrepancy with regard to the blood group in the alleged weapon used, it is a settled position of law that it is sufficient to prove that the blood stain in the weapon is that of human blood.

6. In the considered opinion of this Court, the points urged by the learned counsel for the petitioner/appellant can be appreciated only at the time of advancing of final arguments in the Criminal Appeal. This Court *prima facie* is of the view that it is not a fit case for suspension of sentence.

7. Therefore, this Criminal Miscellaneous Petition is dismissed.

-sd/-

11/04/2019

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

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High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SESSIONS
JUDGE, COIMBATORE.

2 THE INSPECTOR OF POLICE,
B-6, PEELAMEDU POLICE STATION,
COIMBATORE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

C.C. to M/S.R.CHAKKARAVARTHY Advocate on payment of necessary
charges

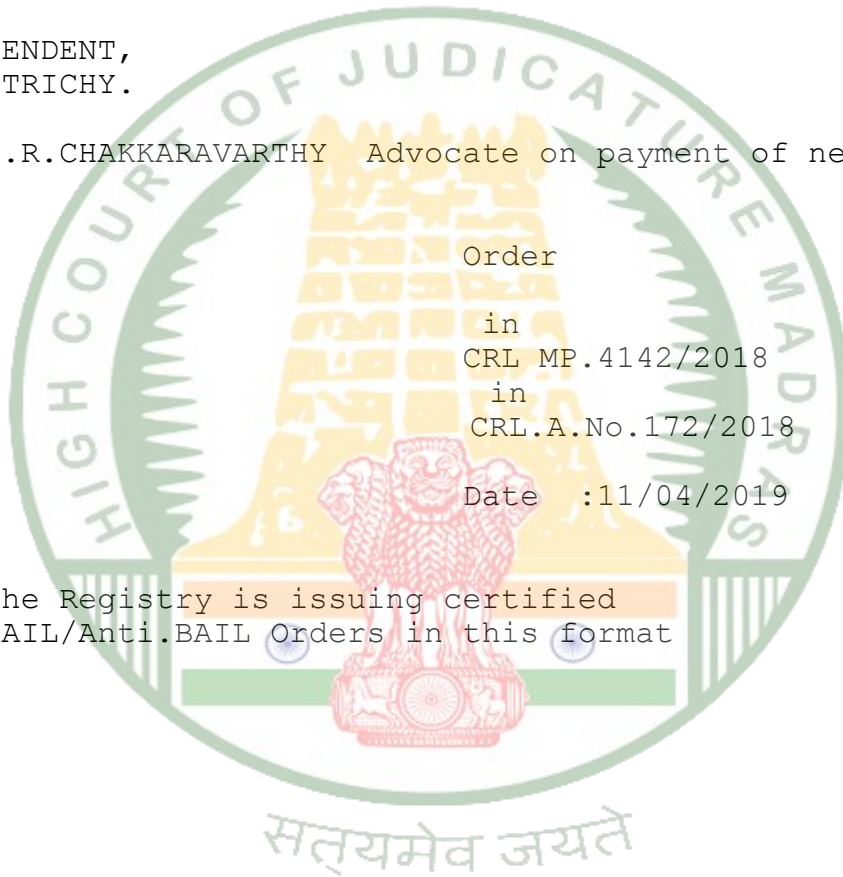
Order

in
CRL MP.4142/2018
in
CRL.A.No.172/2018

Date :11/04/2019

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