

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Fifth day of October Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.13491 of 2019

IN CRL.A.NO.191 OF 2019

SILAMBARASAN

[PETITIONER]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
METTUPALAYAM POLICE STATION,
PUDUCHERRY.
CRIME NO.66 OF 2014

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.191 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed on the petitioner by judgment dated 13.03.2019 and made in S.C. No.3/2015 on the file of the III Additional Sessions Judge at Puducherry and enlarge the petitioner on bail pending disposal of the above CRL.A.NO.191 OF 2019 [IN CRL.MP.NO.13491 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.191 OF 2019 on the file of the High Court and upon hearing the arguments of MR.GOPINATH SENIOR COUNSEL FOR M/S.L.MAHENDRAN, Advocate for the petitioner and of MR.BHARATHA CHAKRAVARTHY ADDITIONAL PUBLIC PROSECUTOR [PONDICHERRY] 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 first accused along with A2 and A3 convicted for the offence punishable under Sections 302 r/w 34 IPC & 382 r/w 34 IPC in S.C.No.3 of 2015 on the file of III Additional Sessions Judge (FAC), Puducherry and for the offence punishable under Section 302 r/w 34 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment and for the offence punishable under Section 382 r/w 34 IPC, sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous

imprisonment and ordered to run the sentences concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The occurrence was on 06.06.2014. The case of the prosecution is that the deceased was a land lord of the petitioner. The petitioner along with the other accused committed the offence and took away the belongings of the deceased.

3. The learned Senior Counsel appearing for the petitioner would submit that it is a case of circumstantial evidence. The arrest was made only on 13.06.2014. The last seen theory by itself cannot be a ground to implicate the petitioner. P.W.4 was the only witness who has seen the deceased with the petitioner from a distance. She was also examined at the earlier point of time when the petitioner was also examined. The recovery has been made from A2 alone. There is no certification obtained as mandated under Section 65B of Indian Evidence Act. The report of the CDR has also not been marked. The petitioner has been under incarceration for more than seven months. Though it is a second application and the earlier application filed having been withdrawn, the sentence imposed will have to be suspended.

4. The learned Public Prosecutor (Puducherry) appearing for the respondent would submit that the trial Court considered the evidence of P.Ws.1 to 23. Though it is a case of circumstantial evidence, the fact that the petitioner is the tenant is not in dispute. The last seen theory has been established through the evidence of P.W.4. Thus, the petition will have to be dismissed.

5. The petitioner has been under incarceration for more than seven months. From the submissions made by the learned Senior Counsel appearing for the petitioner, we find that there are sufficient grounds available in the appeal. We may note that mere last seen theory by itself cannot be a ground to hold that the other ground of the circumstantial evidence including linking of the chain are established. Thus, we find that there are arguable points available in the appeal.

6.Considering the above coupled with the period of incarceration of the petitioner, we are inclined to suspend the sentence. 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 the Judicial Magistrate No.II, Puducherry and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

25/10/2019

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 III ADDITIONAL SESSIONS
JUDGE, PUDUCHERRY.

2 THE JUDICIAL MAGISTRATE,
NO.II, PUDUCHERRY.

3 THE CHIEF JUDICIAL MAGISTRATE
PUDUCHERRY [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY.

5 THE PUBLIC PROSECUTOR
PUDUCHERRY.

6 THE INSPECTOR OF POLICE
METTUPALAYAM POLICE STATION,
PUDUCHERRY.

+1C.C. to M/S.L.MAHENDRAN Advocate on payment of necessary charges SR NO.22117

+1C.C. TO OFFICE OF THE PUBLIC PROSECUTOR FOR PUDUCHERRY SR NO.22206

Order

in
CRL MP.13491/2019

in
CRL A.191/2019

Date :25/10/2019

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MK:25/10/2019



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