



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Fourth day of June Two Thousand Nineteen

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PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.5275 of 2019
IN
CRL A(MD) No.262 of 2019

ARUMUGAM

... PETITIONER/ APPELLANT/ACCUSED

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
SAMAYANALLUR POLICE STATION,
MADURAI DISTRICT.
CRIME NO. 138 OF 2013

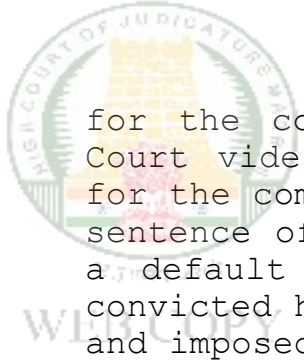
... RESPONDENT/ RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the sentence imposed on the Petitioner /appellant/accused in S.C No. 367/2017 dated 21.02.2019 on the file of the learned 1st Additional District and Sessions Judge Madurai and enlarge him on bail till the disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.GOPALA KRISHNA LAKSHMANA RAJU, Senior Counsel for MR.R.VENKATESWARAN, Advocate for the petitioner and of MR.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of this Court was made by **M.SATHYANARAYANAN, J**)

The sole accused in S.C.No.367 of 2017 on the file of the Court of 1st Additional District and Sessions Judge, Madurai is the petitioner herein/appellant in the main appeal and he was charged



for the commission of offences u/s 302 and 201 I.P.C. The trial Court vide impugned judgment dated 21.02.2019, had convicted him for the commission of offence under Section 302 I.P.C. and imposed a sentence of life imprisonment and to pay a fine of Rs.10,000/- with a default sentence of one year simple imprisonment and further convicted him for the commission of offence under Section 201 I.P.C. and imposed a sentence of 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- with a default sentence of 6 months simple imprisonment. The sentences were ordered to run concurrently. Set off was also granted under Section 428 Cr.P.C., if the life imprisonment is commuted by the appropriate Government. The petitioner, challenging the legality of the said conviction and sentence, preferred the present appeal and pending appeal, filed the present petition seeking suspension of the substantive sentences of imprisonment.

2.Mr.Gopala Krishna Lakshmana Raju, learned Senior Counsel appearing for the petitioner and assisted by Mr.R.Venkateswaran, learned counsel for the petitioner, would submit that the case of the prosecution rests on circumstantial evidence and the motive for the commission of offence is that the petitioner's/accused's sister was married to one Vellaichamy and the deceased is the son of Vellaichamy and Vellaichamy and petitioner's sister were living separately on account of matrimonial discard and the deceased Subramaniam is a drunkard and he used to abuse the sister of the petitioner for transferring some immovable property and unable to bear with the nuisance and torture of the deceased, the petitioner/appellant took a decision to do away with his life and accordingly, on 21.05.2013, with an intention to murder the deceased, the petitioner/appellant took the deceased Subramaniam to his old house at Middle Street, Thachampathu and both of them were cleaning the TVS XL bearing Registration No.TN 59 K 8429 (M.O.2). The petitioner/appellant took the knife (M.O.1) and repeatedly attacked the deceased and thereafter, the deceased died and in order to conceal the commission of offence, he has put the body of the deceased into the septic tank situated in front of his house.

3.The primordial submission of the learned Senior Counsel appearing for the petitioner/appellant is that all the material witnesses have turned hostile and except the extra-judicial confession alleged to have been given to P.W.13, coupled with the recovery of materials as well as matching of the finger impression in the motor cycle, no other evidence has been produced to connect the petitioner/appellant with the crime and the trial Court ought to have acquitted him and he also made a submission that during the pendency of trial the petitioner/accused was on bail throughout and hence, prays for suspension of the substantive sentences of imprisonment.

4.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the extra-judicial confession given by the petitioner to P.W.13 has been amply



corroborated through scientific evidence as well as the recovery and the trial Court on proper appreciation of oral and documentary evidence had reached the conclusion to convict and sentence the petitioner/appellant and hence, prays for dismissal of this petition.

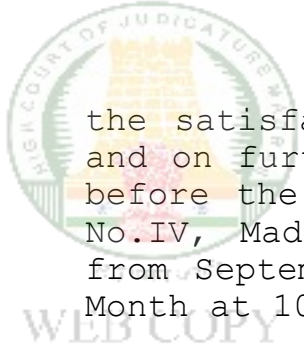
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5.This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

6.Admittedly the case of the prosecution rests on circumstantial evidence and as rightly pointed out by the learned Senior Counsel all the material witnesses have turned hostile and according to P.W.13 - Village Administrative Officer, the petitioner/accused is not known to him and on 26.05.2013, he voluntarily gave confessional statement and it was recorded as EX.P.4 and he prepared his report Ex.P.5 and he took him to the jurisdictional police and subsequently there was arrest and based on his admissible portion of confession statement material objects have also recovered. Prima-facie, it appears that the only link of the petitioner/appellant to the commission of offence is the extra-judicial confession given to P.W.13. It is settled position of law that extra-judicial confession is a weak piece of evidence, unless it is corroborated by material evidence produced. It is also to be noted, in pursuance of the extra-judicial confession recovery of material objects have been effected. It is also the opinion of the finger print expert P.W.28 that the finger print impression found in the motor cycle tallies with the finger print of petitioner/ accused and so also blood grouping. However, in the absence of any material evidence connecting the appellant with the crime, in the considered opinion of this Court, the circumstances projected by the prosecution have not linked with the commission of crime with the petitioner/appellant. In the light of the above facts and circumstances, this Court is of the view that the petitioner/appellant is entitled for suspension of the substantive sentence of imprisonment pending this appeal.

7.It is also brought to the notice of this Court by the learned Senior Counsel appearing for the petitioner/appellant that the petitioner is a serving personal in Indian Army and prior to conviction, he was serving in a hard place in China Border and therefore, the petitioner may be permitted to appear before the committal Court once in three months. This Court heard the learned Additional Public Prosecutor appearing for the State on this submission.

8.In the result, the petition is ordered and the substantive sentence of imprisonment alone in respect of the petitioner/appellant is suspended and the petitioner/appellant is 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.IV, Madurai and on further condition that the petitioner/appellant shall appear before the Committal Court, viz., the Court of Judicial Magistrate No.IV, Madurai [PRC.No.192/2013] once in three months, commencing from September, 2019, on the first working day of English Calendar Month at 10.30 a.m. until further orders.

sd/-
24/06/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.IV,
MADURAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 3 THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, MADURAI.
- 4 THE INSPECTOR OF POLICE,
SAMAYANALLUR POLICE STATION,
MADURAI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.R.VENKATESWARAN Advocate SR.No.10324

COPY TO:
THE COMMANDING OFFICER,
UNIT 148, LIGHT AIR DEFENCE REGIMENT,
C/o.99 APO,
PIN - 926 148.

ORDER
IN
CRL MP(MD) No.5275 of 2019
IN
CRL A(MD) No.262 of 2019
Date :24/06/2019