

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 1924 of 2020
in Crl. A. No. 100 of 2020

Anbuselvan, Male/A.27 years,
S/o. Rajendran,
Thadikkal,
Dhenkanikottai Taluk,
Krishnagiri District.

... Appellant/ Accused No.6

Vs

State through,
The Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.
(Crime No. 273 of 2011)

... Respondent/Complainant

PRAYER : Criminal Miscellaneous Petition filed under Section 389 (1) r/w 439 of Criminal Procedure Code praying to suspend the sentence imposed on him in S.C.No.95/2018 dated 03.01.2020 passed by the learned Additional District Sessions Court, Krishnagiri and enlarge him on bail.

For Petitioner : Mr. V. Gopinath,
Senior Counsel

For Respondent : Mrs. M. Prabhavathi,
(Additional Public Prosecutor)

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter is heard through "Video Conferencing".

2.This appeal has been filed against life imprisonment inflicted on the petitioner by the judgment dated 03.01.2020 in S.C.No.95/2018, passed by the Additional District Sessions Court, Krishnagiri, for murdering Ajith Kumar, friend of the petitioner along with two juveniles on 30.07.2011 and the present application has been taken out to suspend the sentence imposed on the petitioner/accused.

3.Mr.V.Gopinath, learned Senior Counsel appearing on behalf of the petitioner very strenuously would argue that there is no motive for the murder and the recovery of the motorcycle and cellphone was also not proved according to law.

The finger print which has been used in this case was not scientifically proved. The last seen theory was also not proved as per law. According to the prosecution, the petitioner was last seen on 30.07.2011, whereas on the very same day, the accused/petitioner was possessing the motorcycle of the deceased and the same was seized by the relatives, as could be evidenced from the witness of P.W.1 to P.W.4. If that is the case, the relatives would have questioned the whereabouts of the deceased and therefore, the last seen theory has to go.

4.Regarding the recovery of motorcycle and knife is concerned, the motorcycle was already seized by the relatives and therefore, the recovery based on the information given by the petitioner subsequent to his arrest also goes.

5.Regarding arrest, it was categorically stated by the witnesses, the very next day in the police station the accused was present, whereas the accused was arrested as per records only on 03.08.2011. Therefore, arrest and consequent recovery also goes.

6.Regarding the finger print, the learned Senior Counsel would submit that

there is a beer bottle seized from the scene of occurrence, to which the finger print of the accused did not match. No finger print of the accused was taken. However, from the daily arrest register, the finger print has been taken and that is alleged to have been matched with the right index finger of the accused found in the beer bottle. It is not known how the finger print has tallied when the same was not scientifically analyzed. In the absence of any finger print taken from the accused, the reliance of finger print by the prosecution has to go.

7.Regarding motive, it has been alleged that there was quarrel and misunderstanding between the deceased, who is captain of the cricket team, in sharing of Rs.4,000/- which was won by them as a team. According to the prosecution, though Rs.4,000/- was the gift amount, the deceased took Rs.2,000/- and asked the rest of the team to share Rs.2,000/-. That was also one of the motive, which was not proved by any of the witnesses. The other motive is with regard to love affair of the deceased with one minor girl, whom the petitioner also has got one side love and because of that also the petitioner/accused had a motive to do away with the deceased. However, no evidence has been adduced in this regard.

8. One other motive is with regard to loan of Rs.10,000/- lent by the accused to the deceased. In spite of demands, the deceased did not repay the amount and that is the reason why he was done away by the accused. In this regard also, there is no evidence and therefore, he seeks for suspension of sentence and it is based on only last seen theory which is not proved and also circumstantial evidence and no direct evidence was available. In that event, there is arguable point involved in this case and therefore, the sentence has to be suspended.

9. On the other hand, Mrs.R.Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondent very vehemently opposed the prayer for suspension. She would submit that it is based on the last seen theory, which was proved by the evidences of P.W.1, P.W.3, P.W.4 and P.W.8 before the occurrence and P.W.4, after the occurrence. She would submit that based on the confession only, the arrest was made. The motive for murder was clearly evidenced by P.W.2, P.W.4 and P.W.8. The prosecution case is based on circumstantial evidence, which is beyond reasonable doubt by all the witnesses and therefore, suspension cannot be granted.

10. Heard the parties and perused the records.

11. This is a case based on circumstantial evidence. The reasons for motive has been adduced which have been spoken by the witnesses. Regarding recovery, based on the confession only, motorcycle and the cell phone have been recovered. P.W.1, P.W.3, P.W.4 and P.W.8 who have spoken about the accused have seen the accused along with the deceased. Moreover, it is a cruel murder by slitting the throat of the deceased by the petitioner along with two others. Though arguable points are there, this can be decided only at the time of final disposal of the appeal, after appreciating the evidence. Therefore, this is not a fit case for granting suspension of sentence to the petitioner and the petition is dismissed with liberty to the petitioner to file a fresh petition.

सत्यमेव जयते

(N.K.K.,J.)

(V.M.V.,J.)

28.07.2020

gsa

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To

1.The Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.

2.The Public Prosecutor
High Court of Madras.

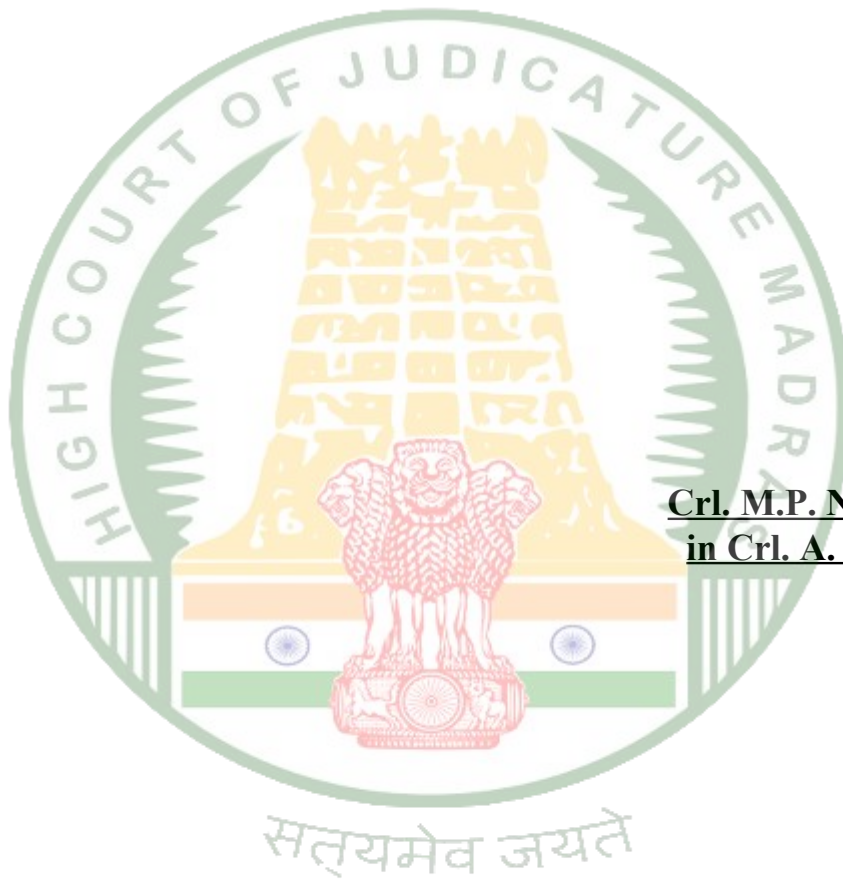


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