

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CrI.M.P.No.3066 of 2020

in

CrI.A.No.166 of 2020

Iyappan (alias) Saravanan ... Petitioner / Appellant

Vs.

The State

Represented by Inspector of Police,
Aliyar Police Station,
Coimbatore.

... Respondent

Prayer: This Criminal Miscellaneous Petition is filed under Section 389(1) of Cr.P.C., 1974 to suspend the operation of the sentence passed in Judgment dated 18.12.2019 in S.C.No.12 of 2019 on the file of the I Additional District and Sessions Judge, Coimbatore and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Ms.S.Yogalakshmi

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

O R D E R

(Order of the Court was made by V.M.VELUMANI, J.,)

The matter was heard through Video Conferencing.

2.The appellant was convicted by the learned I Additional District and Sessions Judge, Coimbatore in S.C.No.12 of 2019 for the offence punishable under Section 302 IPC with life time imprisonment and also imposed a fine of Rs.1,000/- on failure to pay 3 months simple imprisonment of the appellant/accused. Aggrieved over the conviction and sentence passed by the learned I Additional District and Sessions Judge, Coimbatore, the accused had filed the appeal in C.A.No.166 of 2020 before this Court. Along with the appeal, he has also filed the present Miscellaneous Application praying for suspension of sentence.

3. According to the prosecution, the petitioner/accused and his wife had frequent quarrel and the deceased/wife of the petitioner used to go to her father's house. On one such occasion, the petitioner/accused had driven the deceased out of the house and refused to give the custody of minor son. Hence, the deceased left to her father's house. On oral complaint by the deceased to the All Women Police Station, Pollachi, the minor child was handed over to the deceased. After that, the petitioner went to his father-in-law's house, made a compromise and brought the deceased back to his house. The petitioner/accused took the deceased to the rock at Poovalaparuthi, Paalaru, right side of P.W.2 coconut grove with an intention to murder her. At that time, a quarrel arose between the petitioner and the deceased and the same was witnessed by P.W.1 and P.W.7. According to the prosecution, subsequently P.W.1 saw the petitioner strangulating the deceased. During the Trial, both P.W.1 and P.W.7 turned hostile but the learned Trial Judge relied on the chief examination of P.W.1 and P.W.7, accepted the case of the prosecution and convicted the petitioner.

4. The learned counsel appearing for the petitioner contended that the learned Trial Judge has convicted the petitioner based on the retracted evidence of P.W.1 and P.W.7, without properly appreciating the evidence of P.W.1 and P.W.7 in their cross examination and did not follow the ratio laid down by the Hon'ble Apex Court. He further contended that there are arguable points in the appeal and he therefore prayed for suspension of sentence imposed against the petitioner.

5. Per contra, Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the respondent contended that P.W.1 and P.W.7 in the chief examination has stated that petitioner only strangulated the deceased. After lapse of time between the chief examination and cross examination, P.W.1 and P.W.7 have turned hostile. The learned I Additional District and Sessions Judge, Coimbatore by properly applying the legal position with regard to relying on the evidence of witness turned hostile has rightly convicted the petitioner/accused relying on the judgment of the Hon'ble Apex Court and therefore the sentence imposed against the petitioner/accused cannot be suspended.

6. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. Considering the arguments of learned counsel appearing for the petitioner/accused with regard to reliance placed by the learned I Additional District and Sessions Judge, Coimbatore on the evidence of P.W.1 and P.W.7 who turned hostile, this Court is of the view that there are arguable points in the main appeal. Considering the above facts, this Court is inclined to suspend the sentence imposed against the petitioner. Accordingly, the substantive sentence of life imprisonment imposed by the learned I Additional District and

Sessions Judge, Coimbatore against the petitioner/accused alone is suspended and the petitioner/accused is directed to be released on bail with the following conditions:

(i) The accused is directed to execute his own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) before the learned I Additional District and Sessions Judge, Coimbatore.

(ii) The accused must also appear before the learned I Additional District and Sessions Judge, Coimbatore on the first Monday of every month until further orders.

-sd/-

31/07/2020

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 I ADDITIONAL DISTRICT
AND SESSIONS JUDGE, COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALIYAR POLICE STATION,
COIMBATORE.

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

Order

in
CRL MP.3066/2020

in
CRL.A.166/2020

Date :31/07/2020

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CS 18/08/2020