

Crl.A.260 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

and

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.M.P.No.4227 of 2020
in Crl.A.260 of 2020

Krishnamurthy

.. Petitioner/Appellant
/A-1

-Vs-

State by
The Inspector of Police
Velur Police Station
Namakkal District
Crime No.164 of 2013

..Respondent/Complainant

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence and conviction imposed against the petitioner in S.C.No.63 of 2017 dated 04.03.2020, by the Principal Sessions Judge, Namakkal and enlarge the petitioner on bail, pending disposal of the said Criminal Appeal.

For Petitioner : Mr.V.Parthiban

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

ORDER

(Order of the Court was made by P.VELMURUGAN, J.)

The petitioner has been arrayed as A-1 in S.C.No.63 of 2017 on the file of Principal Sessions Judge, Namakkal, for the offence punishable under Sections 302 and 449 of IPC. The trial court vide Judgment dated 04.03.2020 convicted the petitioner for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and also imposed a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for four years and acquitted for the offence punishable under Section 449 of IPC.

2. The case of the prosecution is that the deceased Ramasamy is the grand father of the appellant/1st accused and the 2nd accused is the friend of the appellant herein. There was a rumour in that village that the appellant is the son of the deceased. The appellant demanded to register two acres of land owned by the said deceased and due to the failure of transfer of the said property, the appellant and the 2nd accused, on 12.04.2013 at about 1 p.m., while the deceased was lying on a cot, the 2nd accused strangled the deceased with a rope and the appellant cut the neck of the deceased with

knife and also thrown grinding stone on his right side of the ear.

3. The learned counsel for the petitioner would submit that there is no eye witness in this case. The conviction is only based on the extra judicial confession alleged to have made by the appellant before the Village Administrative Officer-P.W.8. The settled proposition of law is that extra judicial confession is a weak piece of evidence. The said alleged extra judicial confession made before the Village Administrative Officer and the confession statement made before the Inspector of Police, both are verbatim and the extra judicial confession made by the accused before the Village Administrative Officer runs to several pages. After two hours, the appellant alleged to have made confession before the Police Officer which also runs to several pages and both are verbatim and it is not possible to give a confession statement runs to several pages and that too both the confession statements before the different officers are verbatim. Therefore, the extra judicial confession is not trustworthy. Further the extra judicial confession is not corroborated by other witnesses. Since this case is based on circumstantial evidence, the chain of link should be proved without any

break. In this case, there is no chain of link and the alleged motive has not been proved. All the witnesses have turned hostile. The blood stained M.Os. 17 and 18 have been recovered. But the same have not been sent for finger print expert's opinion. The bureau kept in the deceased house was broken. The prosecution has not taken any steps to take the finger print. He further submits that the appellant is in jail from the disposal of the Sessions Case, therefore, he is entitled to suspension of sentence till the disposal of the appeal.

4. The learned Additional Public Prosecutor would submit that the petitioner is the prime accused and is the paternal grandson of the deceased. The deceased was having three acres of land. He settled one acre of land in favour of petitioner's mother. Though the deceased promised to give another two acres of land to the petitioner, he failed to do the same. Therefore, the petitioner along with his friend A-2, committed the murder. The petitioner cut the neck of the deceased with knife and also thrown the grinding stone on his right side of the ear and the doctor who conducted autopsy, also confirmed that the deceased appear to have died due to the

injuries sustained by him. Based on the extra judicial confession given by the petitioner, the properties were recovered and sent for expert opinion. The Serology Report also shows that the blood found in the dress materials is the human blood. The prosecution has proved the case beyond reasonable doubt. Even though there is no eye witness and all the witnesses are relatives and they are not supporting the case of prosecution, the petitioner himself given extra judicial confession before Village Administrative Officer and he has also been a witness to the recovery of the Material Objects. P.Ws.5 and 6 are co-workers who were working with the deceased. They have clearly stated that without any intimation, on the occurrence date, the petitioner left from the working spot for one hour which itself clearly corroborate that at the time of occurrence, the petitioner was not in the work spot. Therefore, the trial court has clearly appreciated the entire evidence and rendered conviction. Therefore, the petition is liable to be dismissed.

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5. Heard and perused the records.

6. We do find from the evidence available on record that there is

specific overtact attributed against the petitioner. The petitioner himself has given extra judicial confession before the Village Administrative Officer, in which he admitted that he cut the neck of the deceased with knife and A-2 strangled the deceased. So with the help of A-2, the petitioner has committed the offence. The learned counsel for the petitioner has submitted that there is no eyewitness and there is suspicion over the extra judicial confession, therefore, the conviction cannot be rendered based on extra judicial confession since extra judicial confession is a weak piece of evidence. The contention raised by the learned counsel for the petitioner is the merit of the appeal and that can be decided while hearing the appeal. When the trial court found that the accused has committed offence and convicted him under section 302 IPC, the question as to whether the conviction passed by the trial Judge is proper or not can be decided on appeal and not at this stage. Since the petitioner is the prime accused and there is a specific overtact against the petitioner and the medical evidence also corroborate the same, we are not inclined to suspend the sentence.

7. Even this court is inclined to take up the appeal immediately after

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receiving the records from the trial court and preparing typed set of papers by the Registry.

8. In view of the same, this Court is not inclined to suspend the sentence imposed on the petitioner/Appellant. Hence, this Criminal Miscellaneous Petition is dismissed.

(N.K.K.,J.) (P.V.,J.)
24.09.2020

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To

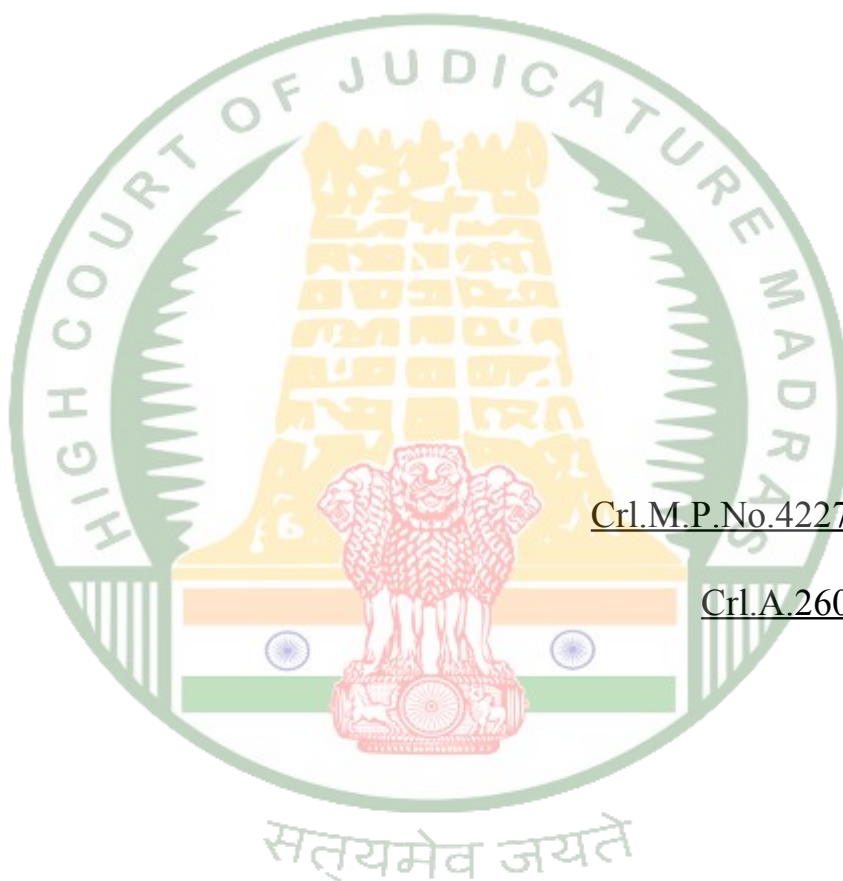
1. The Principal Sessions Judge, Namakkal.
2. The Public Prosecutor office, High Court, Madras.

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Registry is directed to call
for the records from the trial court
and further directed to prepare the
typed set.

2. List the matter after the
typed set being made ready.

(N.K.K.,J.) (P.V.,J.)

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