

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 4379 of 2020
in Crl.A. No. 272 of 2020

Bharanidharan, M/A. 37 years,
S/o. Palanivel,
Presently lodged at,
Central Prison, Puzhal,
Chennai.

.. Appellant / Appellant

Vs.

The State
Rep. by its Inspector of Police,
B1, North Beach Police Station,
Chennai-600 001.
(Crime No. 526/2006)

.. Respondent/ Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(2) of Criminal Procedure Code praying to suspend the sentence of imprisonment imposed by the VII Additional District and Sessions Judge at Chennai in Sessions Case 456 of 2007, convicting the appellant under Sections 302 r/w 34, and 394 IPC and imposing a sentence of life imprisonment along with fine totaling Rs.4,000/- in default thereof to undergo simple imprisonment for 3 months each for the offences under Section 302 r/w 34 IPC and Section 394 IPC, and enlarge the appellant on bail, pending disposal of this criminal

appeal.

For Petitioner : Mr. Sharath Chandran
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.The appeal has been filed by the 3rd accused against the conviction for life for murdering one Kadheeja on 09.09.2006 at her residence, along with two other accused.

3.Mr.Sharath Chandran, learned counsel appearing for the petitioner/3rd accused would point out that the conviction is based on last seen theory and circumstantial evidence. There is no eye-witness for the occurrence.

4.Mr. Sharath Chandran would also point out from P.W.1's evidence that while returning home, P.W.1 saw A1, A2 and A3 hurriedly going down the stairs. When he reached his residence, his mother was found dead.

Though it was taken as natural death, subsequently, on finding the missing of jewellery and cell phone, a complaint was given. Thereafter, the accused were arrested. He would point out that the death occurred on 09.09.2006, the body was buried on 10.09.2006 and thereafter, the complaint was given on 11.09.2006. Hence, there is a delay in filing the complaint. He would further submit that P.W.1 already saw the accused in the Police Station as they were arrested and the jewellery and cell phone were also shown in the Police Station itself. Therefore, the identification parade conducted and identification of the accused loses its significance.

5.Mr. Sharath Chandran, very cogently and tactfully pointed out that the mere recovery of jewellery from the 3rd accused does not mean that he has committed the crime or he has been part of the gang which committed the crime. If at all, it could be only a case of theft, as held by the Hon'ble Supreme Court in *Sonu @ Sunil Vs. State of Madhya Pradesh* reported in **2020 SCC OnLine SC 473**. Even if recovery has not been made according to law, the finger prints from the articles recovered were not taken and matched with the finger prints of the accused, which is also fatal to the prosecution case. There is no corroborative evidence connecting the offence and the

recovery. Therefore, arguable points are involved in the case and the petitioner should be enlarged on bail. The learned counsel appearing on behalf of the petitioner would also point out from the evidence of P.W.18/Doctor, who conducted post-mortem that he did not speak about the circumstances under which the ante-mortem protrusion of the tongue had occurred. Therefore, the evidence of the expert also goes. He relied upon the Division Bench judgment of this Court in ***T.K.Shanmugam Vs. the State of Tamil Nadu***, reported in ***2019 (3) CTC 745*** in support of his contention. Making all these submissions very efficiently and with authority, Mr. Sharath Chandran would seek suspension of the sentence for the petitioner.

6.However, Mrs.M. Prabhavathi, learned Additional Public Prosecutor, appearing on behalf of the respondent would submit that 1st accused is a Cook, 2nd accused is a Car Driver of neighboring company and 3rd accused who is the petitioner was only in possession of the articles found missing. She would submit that P.W.1, P.W.3, P.W.6, P.W.10 and P.W.12 spoke about the presence of the accused on the date of occurrence i.e., on 09.09.2006. Moreover, A1 who is the Domestic Servant was missing from 09.09.2006, till he was arrested. The articles were recovered from A3 and recovery was based

on the evidence of P.W.10. Therefore, the recovery was done according to the law. M.O.2 – gold chain was also recovered from A3, the petitioner. When there are direct witnesses to show the presence of the accused on that day and that the prosecution has proved the case properly, the suspension of sentence cannot be ordered.

7. Heard the parties and perused the records.

8. The case of the prosecution is that on 09.09.2006, when P.W.1 went to his house, he saw A1 and A3 hurriedly coming down the staircase. When enquired, A1 informed him that he would send off his friend and come back. On reaching his house, P.W.1 found his mother unconscious with blood oozing from her mouth and nose. The relatives and neighbours informed him that she would have died out of High Blood Pressure, as she was suffering. Since, there was no occasion for P.W.1 to suspect anything, the body was buried on 10.09.2006. On noticing the missing of jewellery and cellphone and missing of A1, which gave rise to suspicion, Police complaint was given. Therefore, the delay in lodging the FIR cannot be fatal in this case. With regard to the recovery, as rightly pointed out by the learned Additional Public

Prosecutor, the confession and recovery witness - P.W.10 spoke about the recovery of the gold chain – M.O.2 from the petitioner. Though Mr.Sharath Chandran, learned counsel for the petitioner argued that it was not recovered as per law, as there was no corroborative evidence and moreover, finger print has not been lifted from the articles and not compared with the specimen finger print of the petitioner, these are all the points to be analysed based on evidence and that could be done only at the time of final disposal of the appeal.

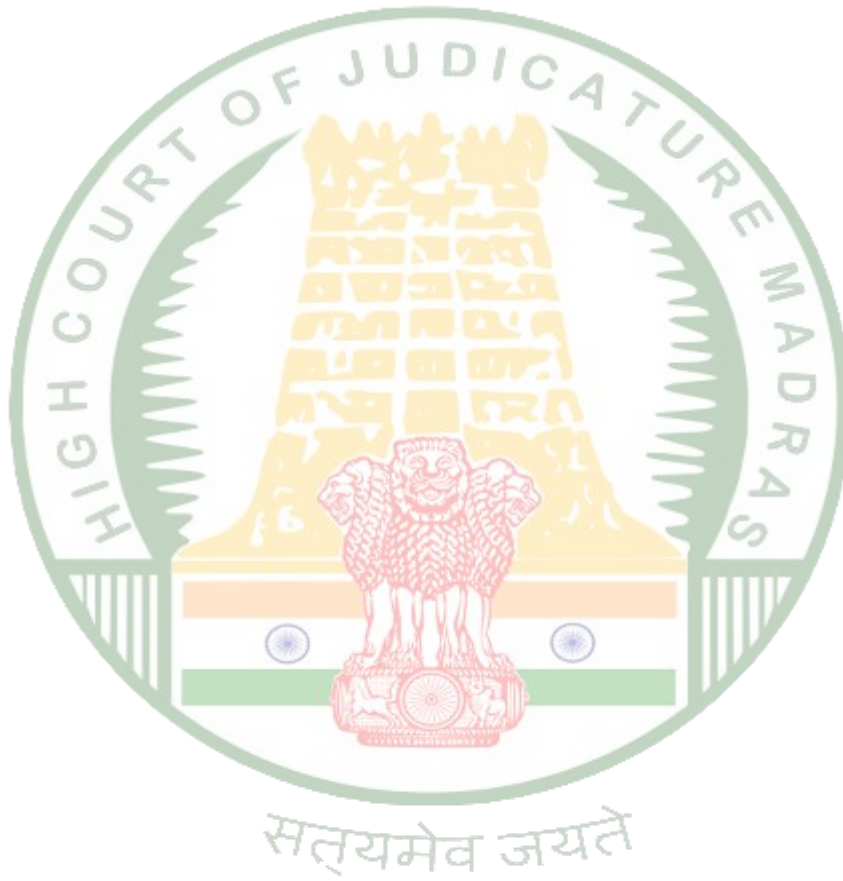
9. Mr. Sharath Chandran would also point out relying upon the judgment viz., *T.K.Shanmugam Vs. the State of Tamil nadu* (cited supra) that reason for ante-mortem protrusion of tongue has not been explained by P.W.18 – Forensic expert and therefore, the expert evidence cannot be relied upon. This is also a point which is arguable based on evidence at the time of final disposal of the appeal. Therefore, this Court is not inclined to suspend the sentence imposed on the petitioner.

10. Accordingly, this petition is dismissed.

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

14.08.2020

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To

1. The Inspector of Police,
State of Tamil Nadu,
B1, North Beach Police Station,
Chennai-600 001.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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