

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 4438 of 2020

in Crl.A No. 273 of 2020

Joseph

... Petitioner

vs

The State Rep. by
The Inspector of Police,
T1 Ambattur Police Station,
Chennai.

... Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed in S.C.No. 82 of 2017 dated 09.03.2020 on the file of II Additional District and Sessions Judge, Thiruvallur and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner .. Mr.P.Rajkumar Pandian

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner has been arrayed as the sole accused in S.C.No. 82 of 2017 on the file of II Additional District and Sessions Judge, Thiruvallur. The trial Court by judgment dated 09.03.2020 convicted the petitioner for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo one month rigorous imprisonment. Seeking to suspend the sentence, the present petition has been filed.

2. The case of the prosecution is that due to the prior motive that emanated in view of the failure of the deceased to make the payment to the petitioner, the offence has been committed. The petitioner is stated to have attacked the deceased with the iron rod in inebriated mood as both of them consumed alcohol. Pursuant to the

last seen theory coupled with the recovery and on being found that there was a prior motive, the trial Court rendered conviction.

3. Learned counsel appearing for the petitioner submitted that there is absolutely no link to connect the events pointing the offence only to the petitioner. Admittedly, it is a case of a circumstantial evidence. If the cheque has been given in favour of the petitioner, there is no need to commit the offence. The alleged cheque has also been not been recovered. The viscera test also indicates that the deceased was not under the control of the alcohol. Therefore, the recovery of the material objects including the liquor bottles and glasses cannot be sustained. The finger print expert also has not followed the procedure as contemplated under the Act governing. Insofar as the last seen theory is concerned, P.W.5 has not taken note of the presence of P.W.1. If there is the prior motive, there is no need for the deceased to travel along with the petitioner. These aspects have not been considered by the trial Court. Therefore, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that there is evidence sufficiently available to hold and substantiate the prior motive and the last seen theory. Only in pursuance of the confession statement made by the petitioner, the recovery has been made. Thus, the petition will have to be dismissed.

5. Prima facie, we are of the view that there are arguable points involved in the appeal. This is a case of circumstantial evidence. Therefore, the prosecution will have to prove that the events are so cogent and connected to each other unerringly pointing the guilt of the petitioner alone. Thus, in the light of the above, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes 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 Judicial Magistrate, Ambattur and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
23/11/2020

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 II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, THIRUVALLUR.

2 THE JUDICIAL MAGISTRATE,
AMBATTUR.

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

5 THE INSPECTOR OF POLICE,
T1 - AMBATTUR POLICE STATION,
CHENNAI.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S. P.RAJKUMAR PANDIAN Advocate on payment of necessary
charges SR.No.7755

Order

in
CRL MP.4438/2020

in
CRL.A.273/2020

Date :23/11/2020

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