

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 4463 of 2020

in

Crl. A. No. 779 of 2019

Suresh Kumar @ Suresh, Male/33 years,
S/o. Mani,
No.26/53, Pothiamman Koil Street,
Korattur, Chennai 600 080.

... Petitioner/Appellant/Accused (A1)

Vs

The State represented by,
The Inspector of Police,
T2, Ambattur Estate Police Station,
Chennai 600 053.

(Crime No. 439 of 2015)

सत्यमेव जयते

... Respondent/Respondent/Complainant

PRAYER : Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code praying to suspend the sentence imposed on the petitioner by the judgment dated 13.09.2019 passed in S.C. No. 241 of 2016 on the file of the learned III Additional Sessions Judge, Poonamallee, Thiruvallur District,

pending disposal of the main criminal appeal.

For Petitioner : Mr. V. Kannadasan

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 petitioner has been convicted by the Trial Court by order dated 13.09.2019 passed in S.C. No. 241 of 2016 on the file of the learned III Additional Sessions Judge, Poonamallee, Thiruvallur District and sentenced to life imprisonment for murdering one Mr. Guru. The said conviction dated 13.09.2019 is sought to be challenged by the 1st accused/ convict by filing this petition.

3. Mr.V.Kannadasan, learned counsel appearing for the petitioner would elaborately argue that there is no motive for murdering the Councillor namely the deceased as no witness spoke about the motive. The second point he would argue is that there are lot of discrepancies with regard to presence of the son of the victim,

as P.W.2- wife of the victim spoke that she and her daughter alone were present. That apart, P.W.4 did not speak that he has seen the murder of victim. There are discrepancies in his evidence with regard to wearing of helmet by the accused at the time of assault. No parade was conducted by the Police to identify the accused. In the absence of any motive, the Trial Court erroneously convicted the petitioner and therefore, he seeks for suspension of sentence.

4. However, Mrs.R.Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondent very sharply reacted stating that it is a cruel day light murder having committed by the accused along with four others. There are discrepancies in the evidence. The presence of the victim's son has been spoken by P.W.4 and P.W.5, independent witnesses and therefore, the petitioner cannot take advantage out of that. She would also submit that there are eye-witnesses viz., P.W.2, P.W.3, P.W.4 and P.W.5 for having witnessed the murder. Therefore, the sentence cannot be suspended.

5. Heard the parties and perused the records.

6. Having heard the parties considerably for a long time, it is evident that it was a cruel murder having committed in the day light. There are independent witnesses who spoke about commission of offence. Though Mr.V.Kannadasan, learned counsel appearing for the petitioner would submit that based on the evidence of P.W.2- wife of the victim that she and her daughter alone were present at the time of occurrence in her residence, the independent witnesses P.W.4 and P.W.5 categorically stated that the son of the victim- P.W.3 was also present at the time of occurrence. Therefore, at this stage, it may not be possible to look into all these discrepancies, if at all.

7. Regarding wearing of helmet by the accused at the time of assault, the said fact has been explained by the witness itself stating that they had taken out the helmet at the time of commission of the offence and therefore, the witnesses could identify the accused.

8. The murder took place on 30.09.2015. The judgment was given on 13.09.2019, after four years. Nowadays, usually acquittal is the order and conviction is exception, as no person come forward to support the prosecution case,

even though they witness cruel murders and that is the reason why our criminal justice delivery system is getting collapsed. Unless the citizens are responsible and they feel that they are also part of the society and come forward to give evidence of what they witness, it is impossible to give conviction by this Court. In the absence of any evidence, the Court is unable to give conviction. However, the public, without understanding the absence of evidence, find fault with the court orders which has become the order of the day.

9. In the instant case, as stated by Mrs.M.Prabhavathi, learned Additional Public Prosecutor, eye-witnesses are there to sustain the conviction and even if there are any lacunae in the evidence, that can be gone into only at the time of disposal of the appeal.

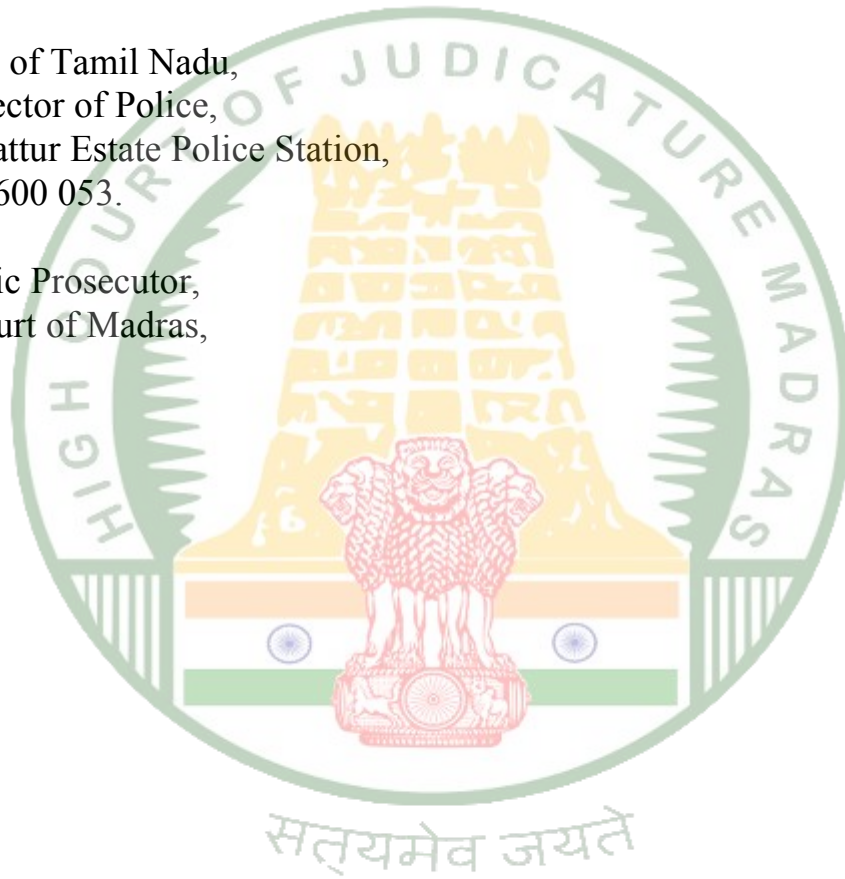
10. The judgment was given only on 30.09.2019. Within a short time, if the convicts are able to come out, that will definitely bring down the image of the Courts in the minds of the people. Even otherwise, it is not a case for suspension of sentence. Therefore, this petition is dismissed.

(N.K.K.,J.) (V.M.V.,J.)
27.07.2020

gsa

To

- 1.The State of Tamil Nadu,
The Inspector of Police,
T2, Ambattur Estate Police Station,
Chennai 600 053.
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.



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