

Crl.A.No.283 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.4496 of 2020
in Crl.A.No.283 of 2020

Karthikeyan @ Karthik

.. Petitioner/Appellant
/Accused 3

-Vs-

State by
Inspector of Police
B-1, Town Central Police Station
Udhagamandalam
(Crime No.623 of 2011)

..Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C., to suspend the sentence of imprisonment imposed on the petitioner/appellant/A3 in S.C.No.242 of 2010 on the file of learned Principal District and Sessions Judge, Coimbatore District dated 02.03.2020 and enlarge the petitioner on bail, pending disposal of Criminal Appeal No.283 of 2020.

For Petitioner : Mr.K.C.S.Balaji

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

ORDER

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

The respondent police registered a case against the petitioner and others in Cr.No.656 of 2009 on the file of the respondent police for the offences under Sections 449, 120(B) r/w 302 I.P.C. and 302 I.P.C. After completing the investigation, the respondent police filed Charge Sheet before the learned Judicial Magistrate, Udthagamandalam in PRC.No.3 of 2010 and the same was committed to the learned Principal District and Sessions Judge, Coimbatore and the learned Sessions Judge, Coimbatore, taken the case on file in S.C.No.242 of 2010. The learned District Judge after framing the charges completed the trial and convicted the petitioner and passed the sentences as follows:

(a) For the offence under Section 120 (B) r/w 302 of I.P.C - to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months Simple imprisonment.

(b) For the offence under Section 449 of I.P.C - to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months Simple imprisonment.

(c) For the offence under Section 302 of I.P.C- to undergo Life Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months Simple Imprisonment.

2. Challenging the conviction and sentence passed by the learned Principal District and Sessions Judge, Coimbatore District, the convict 3rd accused has filed the appeal in C.A.No.283 of 2020 before this Court. Along with the appeal, he has also filed the present Criminal Miscellaneous Petition praying for suspension of sentence.

3. The learned counsel for the petitioner argued at length and he would submit that the case of the prosecution rests upon purely circumstantial evidence and there is no eye witness in this case and the motive as put forth by the prosecution has not been proved. He would further submit that P.W.1 in his cross examination has stated that on the date

of occurrence, his brother (deceased) started from the house at 7.56 A.M. and the distance between the place of occurrence and P.W.1 's house is 500 meters and it requires 15 minutes to go to the canteen, whereas P.W.8, an autodriver has stated in his evidence on 27.06.2009 at about 7.00 A.M., while he was waiting in the auto stand in front of State Bank of India, four unidentified persons came in Indica car and enquired the address of the canteen and thereafter went to canteen. Whereas P.W.18 who is also one of the auto drivers stated in his evidence that on 27.06.2009 at about 7.30 A.M., four persons got into his auto near Bata shop, Commercial Road and he dropped them at Rose garden and while they got down from the auto, P.W.18 noticed that their shirts are blood stained. P.W.32 who is the Security, State Bank of India, Ooty, stated in his evidence that on 27.06.2009, while he was on duty at about 8.00 A.M., four persons went to canteen and when he enquired them, they stated they are going to have tea. He also stated that deceased came to his canteen at 7.00 A.M. and as per evidence of P.W.8 and P.W.18, time of occurrence would be between 7.00 A.M. to 7.30 P.M, but P.W.1 stated in his evidence that his brother started from house only by 7.56 A.M and P.W.32 in his evidence has stated that at about 8.00 A.M. four persons went to canteen. P.W.20-

Crl.A.No.283 of 2020

Dr.Balasubramaniam, who conducted the post mortem, in his evidence stated that he conducted the Post Mortem on 27.06.2009 at 3.45 P.M. and also stated that deceased would have been passed away before 6.45 A.M. to 7.45 A.M. It clearly shows that the evidence of P.W.1, P.W.8, P.W.18 and P.W.33 are doubtful and created for the purpose of prosecution. The trial Court failed to appreciate contradictory evidence given by P.W.1, P.W.8, P.W.18 and P.W.32 regarding the time of occurrence. He would further submit that Exs.P.50 to 59-the details of call registers (CDR) of A1 to A6 were collected by the prosecution are not certified under the provision 65-B of Indian Evidence Act and no officers of the mobile service provider has been examined to prove the documents. He would further submit that CCTV footage was not produced by the prosecution, moreover, the Bank has been guarded by security round the clock. The non production of the CCTV footage by the prosecution is fatal to the prosecution case. Therefore, the petitioner has got good case for acquittal and he has got arguable grounds in the Appeal. Till the appeal is heard, sentence imposed by the petitioner has to be suspended.

4. The learned Additional Public Prosecutor would submit that the case is based on circumstantial evidence and the prosecution has proved the link of the chain of circumstances and also established by their last seen theory. The trial Court on analysing the entire materials found that the petitioner was guilty of offences charged against him and convicted him and sentenced as stated above. The points argued by the learned counsel for the petitioner are on merits and that can be decided in the Appeal and one of the accused A5 was absconding and the case was split up and new case in S.C.No.75 of 2007 is still pending. As far as the overtact alleged against the petitioner is concerned, it is a murder for gain. Under these circumstances, if he is released on bail there is possibility of committing the very similar offence and therefore under these circumstances, he may not be released on bail and the sentence may not be suspended. Already the first accused filed an application before this Court in Crl.A.No.226 of 2020, in which he filed the Miscellaneous Petition in Crl.M.P.No.4226 of 2020 for suspension of sentence and the same was dismissed as withdrawn on 14.07.2020.

5. Heard both sides. Perused the materials on record.

6. Admittedly the petitioner was arrayed as A3 in S.C.No.242 of 2010 on the file of learned Principal District and Sessions Judge, Coimbatore District and framed charges for the offences under Sections 120(B) r/w 302, 449 and 302 of I.P.C. After the trial, the trial Court found guilty of this petitioner for the above said offences and convicted and sentenced him as stated above. Though the learned counsel for the petitioner pointed out some contradictions regarding the time of occurrence and last seen theory, the learned Additional Public Prosecutor stated that it was only minor contradictions and the points raised by the learned counsel for the petitioner are with reference to the merits of the case and that can be decided in the Appeal. As far as the petition filed for suspension of sentence is concerned, the case is based on circumstantial evidence and allegation against the petitioner is that he acted as coolly along with A4 to A6, it is a murder for gain and further the similar application filed by the first accused in Crl.A.No.226 of 2020 is dismissed and yet another co-accused A5 even during the trial was absconding and case was split against him in S.C.No.75 of 2017 and is still pending. Further the occurrence took place in the year 2009 and now we are in the year 2020, and this Court is inclined to take up

Crl.A.No.283 of 2020

the appeal itself immediately after receiving the records from the trial Court and preparing typed set of papers by the Registry.

7. 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

arr

To

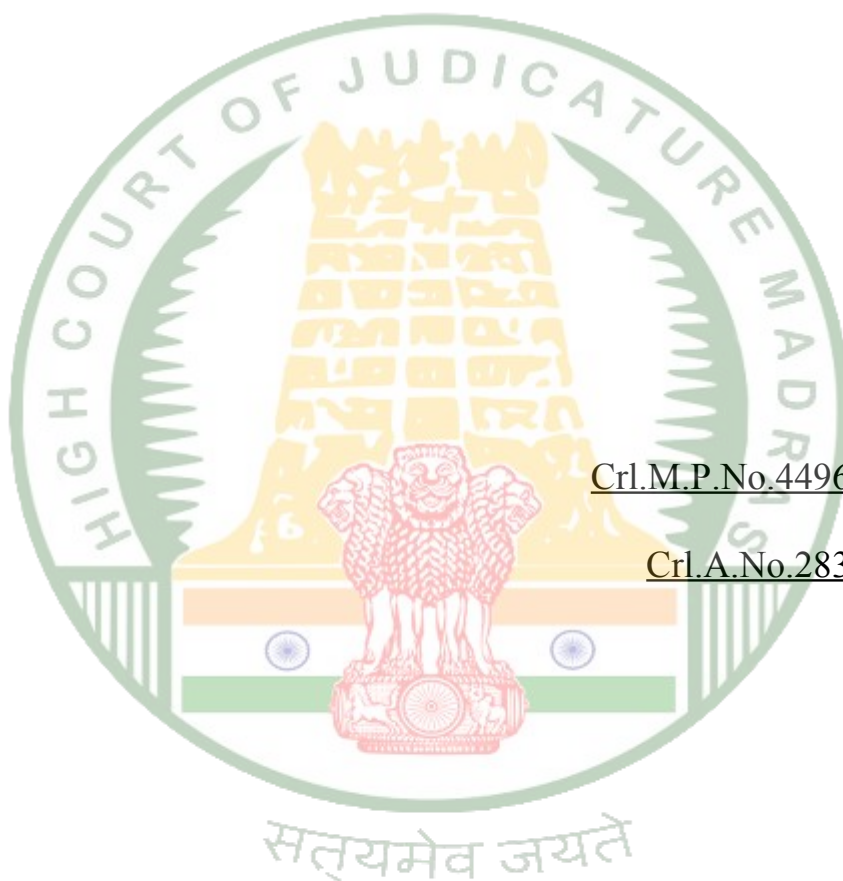
- 1.The Principal District and Sessions Judge, Coimbatore District.
- 2.The Public Prosecutor Officer, High Court, Madras.

WEB COPY

Crl.A.No.283 of 2020

N.KIRUBAKARAN, J.
and
P.VELMURUGAN, J.

arr



Crl.M.P.No.4496 of 2020
in
Crl.A.No.283 of 2020

WEB COPY

24.09.2020

Crl.A.No.283 of 2020

Crl.A.No.283 of 2020

N.KIRUBAKARAN, J.
and
P.VELMURUGAN, J.

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

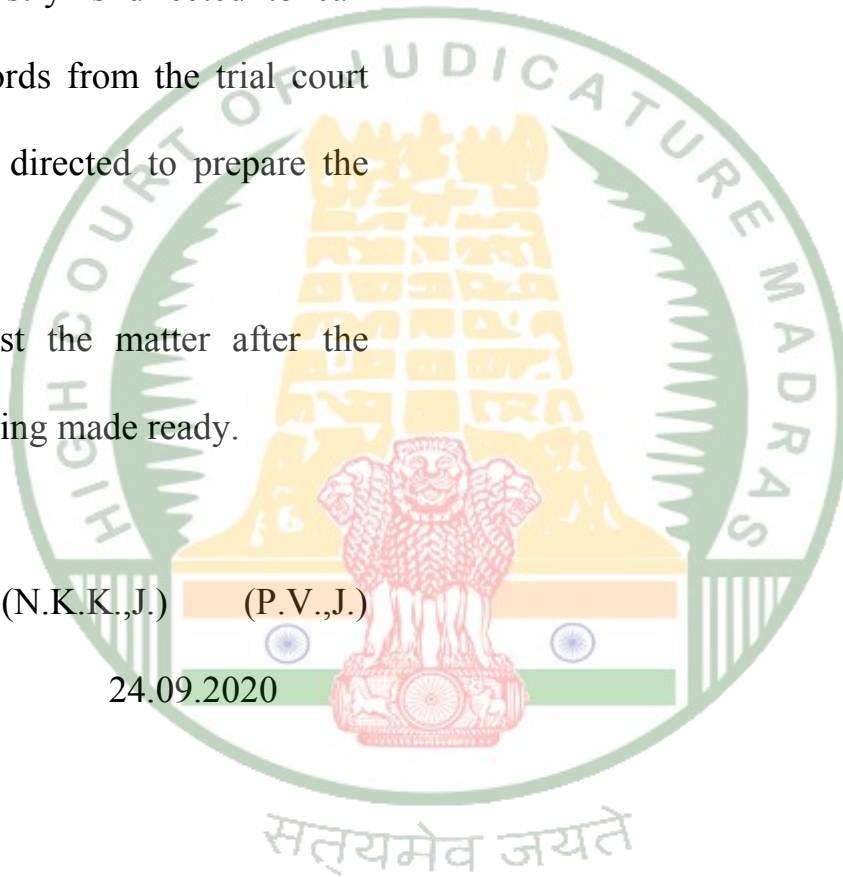
2. List the matter after the
typed set being made ready.

(N.K.K.,J.)

(P.V.,J.)

24.09.2020

nvsri



WEB COPY