

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 4508 of 2020

in Crl.A No. 284 of 2020

C.Jayavel

... Petitioner

vs

State rep. by
The Inspector of Police,
Magudanchavady Police Station,
Salem District.

... Respondent

Petition filed under Section 389 and 439 of Cr PC to suspend the sentence imposed by the I Additional District and Sessions Court, Salem in S.C.No. 39 of 2019 dated 23.01.2020 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner .. Mr.V.Paarthiban

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

ORDER

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

The petitioner is the sole accused in S.C.No. 39 of 2019 on the file of I Additional District and Sessions Court, Salem. He was accordingly convicted for the offence punishable under Section 302 IPC by judgment dated 23.01.2020 and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. Seeking suspension of sentence, the present petition has been filed.

2.The case of the prosecution is that pursuant to a prior quarrel in which the both the petitioner and the accused consumed alcohol, the petitioner went to his house and committed the offence.

3.Learned counsel appearing for the petitioner submitted that the trial Court was wrong in convicting the petitioner without any tangible evidence. It is a case of circumstantial evidence. The confession and recovery cannot be sustained in view of the evidence of P.W.1, who stated that he saw the petitioner at about 1.00 p.m. on the date of complaint being given. Therefore, the subsequent arrest in a different place followed by extra judicial confession and recovery cannot be sustained in the eye of law. Even the evidence of P.W.2, who speaks about having seen the petitioner along with the deceased lastly has not stated that the deceased was available with the petitioner prior to the occurrence. He merely stated that he saw the deceased.

4.Learned Additional Public Prosecutor appearing for the State submitted that the motive has not been established followed by a recovery and therefore, the petition requires to be dismissed.

5.The petitioner has been under incarceration from 22.01.2020 onwards. It is a case of circumstantial evidence. The evidence of P.W.1 would suggest that he saw the prior arrest. Therefore, prima facie, the extra judicial confession, arrest and recovery created suspicion in the mind of the Court. Thus, considering 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 No.2, Sankari and on further condition that he shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

18/12/2020

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 I ADDITIONAL DISTRICT AND SESSIONS COURT,
SALEM.

2 THE JUDICIAL MAGISTRATE NO.2,
SANKARI.

3 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
MAGUDANCHAVADY POLICE STATION,
SALEM DISTRICT.

+1C.C. to M/S.V.PAARTHIBAN Advocate on payment of necessary
charges SR NO.8415

Order

in

CRL.MP.NO.4508/2020

in

CRL.A.NO.284/2020

Date :18/12/2020

From 7.2.2001 the Registry is issuing certified
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MK:18/12/2020

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