

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 4836 of 2020

in Crl. A. No. 916 of 2019

Anandharaj Petitioner/2nd Appellant/Accused -2

Vs

State by,
Inspector of Police,
Valavanthinadu Police Station,
Namakkal District.
(Crime No. 67 of 2016)

.... Respondent/Respondent

PRAYER : Criminal Miscellaneous Petition filed under Section 389 (2) of Criminal Procedure Code, praying to suspend the execution of sentence imposed on the petitioner/appellant by the order of the learned Special Judge for SC & ST (POA) Act and Additional District & Sessions Judge (FAC), Namakkal, in S.C. No. 124 of 2018 dated 06.09.2019 pending disposal of the above appeal.

For Petitioner : Mr. V. Parthiban
for Mr. A. Ilayaperumal

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

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2. The appeal has been preferred by the 2nd accused against the judgment in S.C. No. 124 of 2018 dated 06.09.2019, imposing life imprisonment on the appellant as well as two other accused for having murdered one Rahman, brother of P.W.3, with whom A1 had love affair. The deceased Rahman questioned A1 not to continue the relationship. Since the deceased Rahman was questioning continuously and creating problem, A1 joined with A2 and A3, who are all his close relatives and murdered the deceased. The Trial Court appreciating all the evidence, convicted the accused for life imprisonment. The said judgment is sought to be suspended by the petitioner/2nd accused who is the uncle's son of A1 and A3, who are brothers.

3. Mr. V. Parthiban, learned counsel appearing on behalf of the petitioner would submit that the prosecution case is based on circumstantial evidence and last seen theory. The Trial Court mainly relied upon the evidence of P.W.4 and P.W.5 to prove the last seen theory. However, P.W.4 and P.W.5 had neither named the petitioner/2nd accused nor said anything about his participation in the crime. They only stated that A1 was seen with the deceased Rahman and at that time, A2 and A3 were going in a motorcycle. Beyond that, there is nothing in the evidence against the petitioner. Based on that evidence, the Trial Court erroneously convicted the appellant, he would submit. Secondly, he would submit that no identification parade was conducted as P.W.4 and P.W.5 did not name 2nd accused/appellant and even they were not knowing the name and subsequently, they came to know about that through his friend. Non-conduction of parade is fatal to the case. Thirdly he would submit that there is no overt act attributed to A2 as he was only alleged to be holding the deceased by mouth.

4. Even P.W.6 and P.W.7 informed Police about seeing the body only and they have not stated anything incriminating against the petitioner. Therefore, there is no corroboration with regard to last seen theory. In those circumstances, the suspension of the Trial Court judgment has to be ordered.

5. However, Mrs. R. Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondents would submit that P.W.4 and P.W.5 categorically stated about the presence of the accused on 29.05.2016, when they went to Pudhuvalavu Village to play Kabbadi game and while returning back to Akkaraivalavu, they saw the deceased with the accused. Therefore, the last seen theory is proved by P.W.4 and P.W.5. Secondly, she would submit that based on conviction of the accused only, the recovery was made, especially, billhook and knife. The forensic report - Ex.P26 would confirm that the blood group of the blood found on the weapons and that of the deceased are one and the same. P.W.6 and P.W.7 also confirmed the occurrence and the motive. Therefore, the suspension of sentence cannot be ordered.

6. Heard the parties and perused the materials available on record.

7. It is a case based on circumstantial evidence, as rightly pointed out by the counsel for both parties. A perusal of P.W.4 and P.W.5 evidences would reveal that the deceased was speaking to A1. A2 and A3 were seen riding the motorcycle and stopped the vehicle and thereafter went away. The next day, only the body of Rahman was found and therefore, the last seen theory is proved by P.W.4 and P.W.5. As rightly pointed out by Mrs. R. Prabhavathi, Ex.P26 - Forensic Report would confirm that the blood group of the blood found on the weapons recovered and the deceased are one and the same and P.W.1, P.W.2, P.W.3, P.W.6 and P.W.7 also confirmed the motive for murder. In these circumstances, the sentence cannot be suspended. These are all the points which could be argued at the time of final disposal. Therefore, this court is not inclined to suspend the sentence imposed on the petitioner.

In the result, this petition is dismissed.

-sd/-

25/08/2020

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 SPECIAL JUDGE FOR
SC & ST(POA)ACT, ADDITIONAL DISTRICT &
SESSIONS JUDGE(FAC) NAMAKKAL.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
VALAVANTHINADU POLICE STATION,
NAMAKKAL DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S.A.ILAYAPERUMAL Advocate on payment of necessary charges

Order
in

सत्यमेव जयते
Crl. M.P. No. 4836 of 2020

in Crl. A. No. 916 of 2019

Date :25/08/2020

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RVR 07/09/2020