

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 6354 of 2020

in Crl.A No. 748 of 2019

D.Pradeep

... Petitioner

vs

The State Rep. by
The Inspector of Police,
Pallavaram Police Station,
Chennai - 43.

... Respondent

Petition filed under Section 389(1) Cr.P.C. to suspend the sentence passed by Additional District and Sessions Court, Chengalpattu in S.C.No. 134 of 2011 dated 03.10.2019.

For Petitioner .. M/s.Karan and Uday

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. 134 of 2011 on the file of Additional District and Sessions Court, Chengalpattu and convicted for the offence punishable under Section 302 IPC. For the offence punishable under Section 302 IPC, the petitioner was sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner and the deceased were friends. The petitioner received a sum of Rs.20,000/- from the deceased and promised to pay. On the date of occurrence - 11.12.2010 when they were travelling from Velachery to Pallavaram in a two-wheeler belonging to the deceased, the petitioner asked him to stop the vehicle and thereafter committed the offence.

3. Learned counsel appearing for the petitioner submitted that it is a case of circumstantial evidence and the link has not been established properly. The last seen theory as projected by the prosecution through P.Ws. 8, 9 and 13 cannot be accepted. There is a material difference in the evidence of Investigating Officer, who has stated that there was no light at the place of occurrence and, therefore it would not have been possible for P.Ws. 8, 9 and 13 to see the deceased and the petitioner together. The body was found on the other side of the road contrary to the case of the prosecution. Insofar recovery is concerned, it would not have been possible to recover from the said place as the petitioner by the time has changed his residence. A question was also put to the Investigating Officer in this regard. Considering the above, and particularly, the petitioner is under incarceration for more than one year, and the case is one of circumstantial evidence and the occurrence is said to have taken place on 11.12.2010, this petition will have to be allowed.

4. Learned Additional Public Prosecutor appearing for the State submitted that the last seen theory has been proved along with the recovery under Section 27 of the Indian Evidence Act, 1872. The material objects recovered and the blood stain contained belongs to that of the deceased. The recovery of the bag of the petitioner was taken note of by the trial Court and, therefore, the present petition will have to be dismissed.

5. As submitted by the learned counsel appearing for the petitioner, we are dealing with a case of circumstantial evidence. Prima facie, we find arguable points available in the appeal. The petitioner has been under incarceration for more than one year. The occurrence was on 11.12.2010. The age of the petitioner at the time of occurrence was 25 years. Thus, taking into consideration the above said facts, 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 Additional District and Sessions Court, Chengalpattu 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/-
16/10/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

TO

1 THE ADDITIONAL DISTRICT AND
SESSIONS COURT, CHENGALPATTU.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

3 THE INSPECTOR OF POLICE,
PALLAVARAM POLICE STATION,
CHENNAI-43.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.KARAN AND UDAY Advocate on payment of necessary
charges SR.No.6981

Order

in
CRL MP.6354/2020

in
CRL.A.748/2019

Date :16/10/2020

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