

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 7592 of 2020

in Crl.A No. 357 of 2019

Prasath

... Petitioner

vs

The State Rep. By
The Inspector of Police,
Mettupalayam Police Station,
Puducherry.

... Respondent

Petition filed under Section 389(1) of Cr PC to suspend the sentence of imprisonment imposed on the petitioner by judgment dated 13.03.2019 in S.C.No.3 of 2015 on the file of III Additional Sessions Judge, Puducherry and enlarge the petitioner on bail pending disposal of the Criminal Appeal No.357 of 2019 pending on the file of this Court.

For Petitioner .. Mr.C.Munuraj

For Respondent .. Mr.D. Bharathachakravathy
Public Prosecutor(Puducherry)

ORDER

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

The petitioner has been arrayed as A2 in S.C.No.3 of 2015 on the file of III Additional Sessions Judge, Puducherry. The trial Court by judgment dated 13.03.2019 convicted the petitioner for the offence punishable under Sections 302 r/w 34 IPC and 382 r/w 34 IPC. For the offence punishable under Section 302 r/w 34 IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment and for the offence punishable under Section 382 r/w 34 IPC,

sentenced him to undergo ten years rigorous 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 A1 was a tenant of the deceased. The offence was committed by A2 and A3, namely, the petitioner and the other accused, when A1 stood as guard.

3. Insofar as this petitioner is concerned, he has been implicated pursuant to the confession statement given by A1 followed by recovery.

4. Learned counsel appearing for the petitioner submitted that inasmuch as the offence charged is one under Section 34 IPC, the benefit conferred by this Court in granting suspension of sentence for A1 and A3 would apply to this petitioner also. It is further submitted that apart from the lack of certificate as required under Section 65B of the Indian Evidence Act, there is a serious doubt with respect to the recovery and arrest as there are corrections in the respective dates. Thus, there are arguable points available in the appeal and the petitioner has been under incarceration from 13.03.2019 onwards. Thus, the suspension of sentence will have to be granted.

5. Learned Public Prosecutor (Puducherry) while submitting that it is true that A1 and A3 got their sentence suspended, inasmuch as the recovery is stated to be made pursuant to the statement given by the petitioner under Section 27 of the Indian Evidence Act, this petition requires to be dismissed.

6. It is a case of circumstantial evidence. Apart from the other charges, the petitioner has also been charged under Section 34 IPC. Therefore, the contention of the learned counsel appearing for the petitioner requires to be considered from that perspective. Apart from the same, the petitioner has been under incarceration from 13.03.2019 onwards. Now, more than one year and 10 months has elapsed since then. As stated, this is a case based upon the circumstantial evidence. The question for consideration in this appeal is with respect to the last seen theory and the validity of the recovery made. The deceased died only in the hospital and he was accompanied by A1. Thus, considering the above, we are inclined to suspend the sentence.

7. 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 II, Puducherry 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/-
14/12/2020

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 III ADDITIONAL SESSIONS JUDGE,
PUDUCHERRY.

2 THE JUDICIAL MAGISTRATE II,
PUDUCHERRY.

3 THE CHIEF JUDICIAL MAGISTRATE
PUDUCHERRY. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
METTUPALAYAM POLICE STATION,
PUDUCHERRY.

5 THE PUBLIC PROSECUTOR
PUDUCHERRY.

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY.

+2 C.C. to M/S.G.MUNURAJ Advocate on payment of necessary charges SR.NO.8167

Order

WEB COPY
in
CRL MP.7592/2020
in
CRL A.357/2019

Date :14/12/2020

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