

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. 8263 of 2020

in Crl.A No. 397 of 2020

Venkatesan

... Petitioner

vs

State rep. by
The Inspector of Police,
Veppanpalli Police Station,
Krishnagiri District.

... Respondent

Petition filed under Sections 389(1) and 439 of Cr PC to suspend the sentence imposed on the petitioner for the offence u/s 302 IPC and 201 r/w 302 IPC in S.C.No. 03 of 2019 and on the file of learned Sessions Judge, Krishnagiri District at Krishnagiri on 29.01.2020 pending disposal of Crl.A.No. 397 of 2020 on the file of this Court.

For Petitioner .. Mr.K.Selvarangan

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. 03 of 2019 on the file of learned Sessions Judge, Krishnagiri District at Krishnagiri. He was accordingly convicted for the offence punishable under Sections 302 and 201 r/w 302 IPC by judgment dated 29.01.2019 and accordingly for the offence punishable under Section 302 IPC sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment and for the offence punishable under Section 201 r/w 302 IPC sentenced him to undergo seven years rigorous 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 the deceased was having illicit relationship with the wife of the petitioner. Enraged over the same, the petitioner attacked the deceased by throwing a stone on his head. On the date of occurrence, both the deceased and the petitioner were drunk. P.Ws 6 and 8 are the witnesses, who speak about seeing the deceased and the petitioner together before the occurrence.

3.Learned counsel appearing for the petitioner submitted that it is a case of circumstantial evidence and P.W 8 has stated that he has seen the petitioner on the next day. Therefore, the confession statement, arrest and recovery as deposed by P.W.5 cannot be true. The last seen theory has also not been proved by the prosecution. Admittedly, the deceased was also drunk. Thus, considering the above, and also the period of incarceration, the sentence will have to be suspended.

4.Learned Additional Public Prosecutor appearing for the State submitted that the witnesses speak about the relationship between the deceased and the wife of the petitioner. Though the petitioner and the deceased were drunk, the last seen theory has been proved in the evidence coupled with recovery through P.W.5.

5.Apart from the period of incarceration, the question for consideration is as to whether the prosecution has proved beyond reasonable doubt the last seen theory and the link pointing out only to the petitioner unerringly. We do find existence of arguable points available in the appeal. Thus, taking into consideration the above and particularly the period of incarceration, 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 II, Krishnagiri 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 SESSIONS JUDGE,
KRISHNAGIRI DISTRICT AT KRISHNAGIRI.

2 THE JUDICIAL MAGISTRATE NO.II,
KRISHNAGIRI.

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
VEPPANPALLI POLICE STATION,
KRISHNAGIRI DISTRICT.

C.C. to M/S.K.SELVARANGAN Advocate on payment of necessary
charges

Order
in
CRL.MP.NO.8263/2020
in
CRL.A.NO.397/2020
Date :18/12/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:18/12/2020

WEB COPY