

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No.18479 of 2019
in
Crl.A. No.870 of 2019

Lokesh, male, aged 31 years
S/o.Nagarajappa
Kaamaiyur @ Kaamanpalayam
J.Kaarupalli village
Kelamangalam
Denganikottai taluk
Krishnagiri District.

.. Petitioner/Appellant

Vs.

The State represented by the Inspector of Police
Kelamangalam Police Station.
Crime No.59 of 2013

.. Respondent/ Complainant

PRAYER : Criminal Miscellaneous Petition filed under Section 389 of Criminal Procedure Code praying to suspend the sentence imposed by the Sessions Court, Fast Track Mahila Court, Krishnagiri, in S.C.No.116 of 2016 dated 14.11.2019 whereby convicting the petitioner under Section 302(2 counts) and sentenced him for life sentence for each counts (totally 2 life sentences) and imposed a fine of Rs.5,000/- for each count and failure to pay the same directed to undergo imprisonment for one year rigorous imprisonment,

pending disposal of the above appeal.

For Petitioner : Mr.A.Tamilvanan

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

ORDER

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

The matter is heard through "Video Conferencing".

2.The appeal has been filed by the convict against the double life sentence imposed on him in S.C.No.116 of 2016 by the Sessions Court, Fast Track Mahila Court, Krishnagiri, by the judgment dated 14.11.2019, for having murdered his wife Bhagawath Geetha and her paramour Ganesh on 22.04.2013. The present petition has been filed to suspend the sentence imposed on him.

3.The learned counsel appearing for the petitioner/accused would submit that though many witnesses have been examined as eye-witnesses, there is no positive evidence to prove the involvement of the accused in the crime. There are lot of contradictions in the evidence adduced before the Court. The trial Court relied upon the statement given by one Gopalappa recorded by the Police under Section 161(3) Cr.P.C. Subsequently, the said Gopalappa died. Though a

statement has been recorded under Section 164 Cr.P.C. before the Magistrate, that was not relied upon by the trial Court. Moreover, the trial Court itself refused to believe the extra judicial confession made before the Village Administrative Officer stating that signature of the Village Administrative Officer was not found in the said confession. There is no confession made by the accused, as per the statement of Gopalappa also, who gave statement under Section 161(3) Cr.P.C. and died subsequently. There was a mention about one Ramakrishnan, who was said to have attacked Ganesh with knife and that person was not made as an accused and no explanation was given by the prosecution. Even with regard to the presence of the witnesses P.W.16 and P.W.17 namely, the father and mother of the accused, at the scene of occurrence, two different versions have been given that P.W.16/Desamma and brothers of the accused came to the deceased house and called him. That was not proved as P.W.16 and P.W.17 turned hostile. Even the motive has not been established before the Court by adducing evidence. Therefore, in the absence of any concrete evidence connecting the accused to the crime, the trial Court should not have convicted the accused, that too double life imprisonment, learned counsel for the petitioner would submit. Therefore, he prays this Court to suspend the sentence imposed on the petitioner/accused.

4.However, the learned Additional Public Prosecutor appearing for the respondent would submit that the evidence cannot be split and read in isolation. It has to be read as whole and understood in toto. She would submit that P.W.16 and P.W.17, the parents were present at the scene of occurrence, however they turned hostile. In Section 161(3) Cr.P.C. statement, the said Gopalappa categorically stated that when he was going to his field through the convict's residence, he could see the attack of the accused on the deceased. There is no wrong in relying upon the statement of Gopalappa under Section 161(3) Cr.P.C., especially when he is not alive. Further, she would submit that the presence of the accused and both the deceased has been proved by P.W.3 to P.W.8. When the presence of the deceased and accused has been spoken to by other witnesses, the trial Court is justified in convicting the accused. Therefore, she would submit that the petitioner should not be shown any mercy by suspending the sentence as he has taken away two lives.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials on record.

6.The occurrence was on 22.04.2013. Though as stated by the learned Additional Public Prosecutor appearing for the respondent, the presence of both the deceased as well as the accused is proved, that itself could not be a ground to convict the accused. The evidence should be strong enough to show the complicity of the accused in the commission of the offence. It may be a fact that there was an illegal relationship between both the deceased. However, as rightly pointed out by the learned counsel appearing for the petitioner, prima facie, it is evident that no evidence is available and appreciation of facts could be done in detail only at the time of final disposal of the appeal. But there are arguable points involved in this case. There seems to be inconsistencies in the evidence adduced before this Court. Even the trial Court refused to rely upon the extra judicial confession made before the Village Administrative Officer, as he did not affix his signature though he has corroborated by examining himself as a witness. Since arguable points are involved in this case, this Court is inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment imposed by the Sessions Court, Fast Track Mahila Court, Krishnagiri, on the petitioner alone is suspended on the following conditions:

(i) Petitioner/accused is directed to execute his own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) before the Superintendent of Prison,

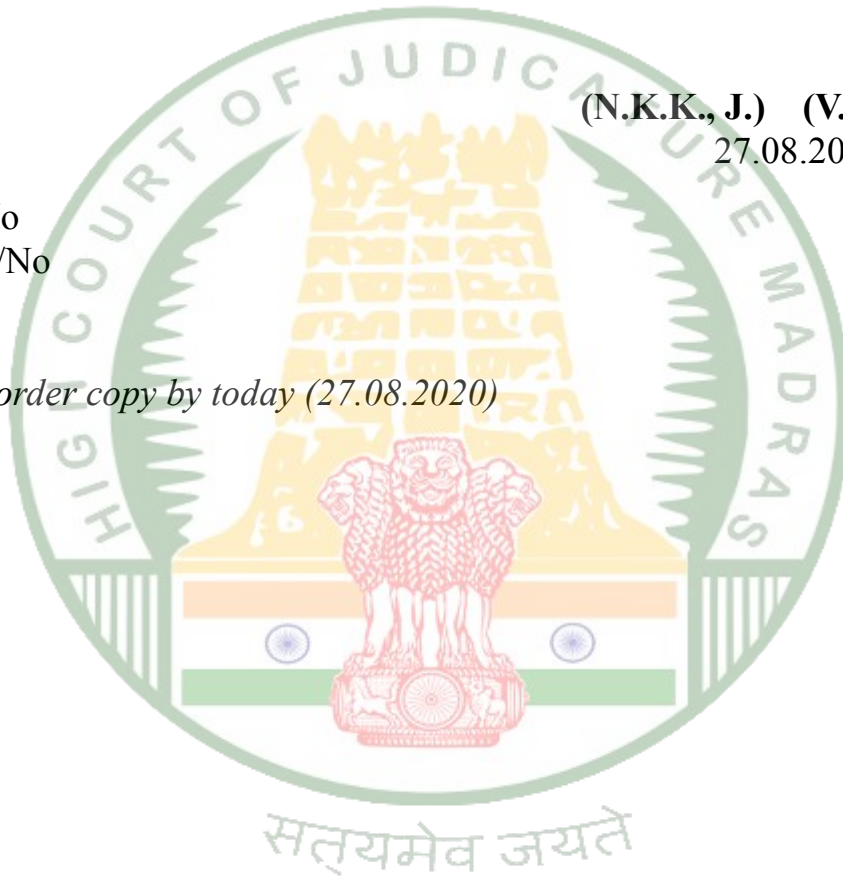
Central Prison, Vellore in view of the prevailing pandemic situation.

(ii) The petitioner shall appear before the respondent police, on first Monday of every month at 11.00 A.M. until further orders.

(N.K.K., J.) (V.M.V., J.)
27.08.2020

Index: Yes/No
Internet: Yes/No
kj

Note: Issue order copy by today (27.08.2020)



WEB COPY

To

1. Inspector of Police
Kelamangalam Police Station.

2. The Sessions Court
Fast Track Mahila Court, Krishnagiri.

3. The Superintendent of Prison
Central Prison, Vellore.

4. The Public Prosecutor,
High Court of Madras, Chennai.



WEB COPY

Crl.M.P.No.18479 of 2019 in Crl.A.No.870 of 2019

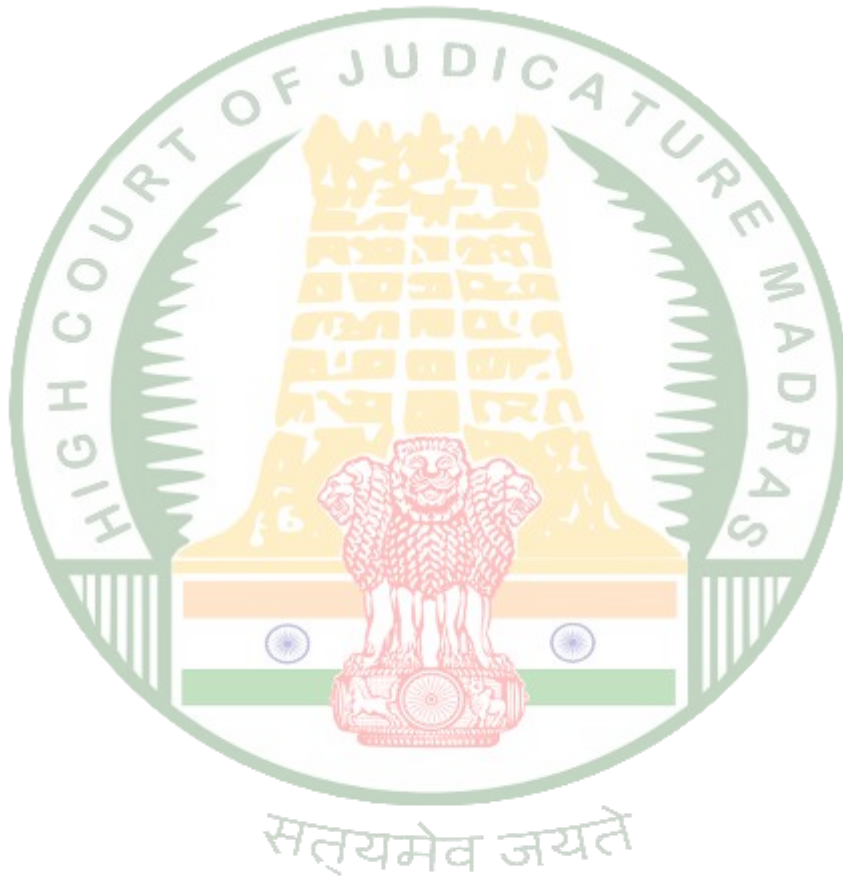
N.KIRUBAKARAN, J.
and
V.M.VELUMANI, J.
kj



Crl. M.P. No. 18479 of 2019
in
Crl.A. No. 870 of 2019

WEB COPY

Dated : 27.08.2020



WEB COPY