

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 18712 of 2019
in Crl. A. No.893 of 2019

Kattaiyan @ Prabu, Male, aged 24 years
Son of Mayavel
No.119/A, Vadakkumelur
Kurinjpadi Taluk
Cuddalore District
Now confined at Central Prison, Cuddalore.

... Petitioner/Accused

Vs

State represented by
Inspector of Police
Neyveli Township Police Station
Cuddalore District.
Crime No.199 of 2017

... Respondent/Complainant

PRAYER : Criminal Miscellaneous Petition filed under Section 389 (1) and (2) of Criminal Procedure Code praying to suspend the sentence imposed in judgment dated 09.07.2019 made in S.C.No.17 of 2018 on the file of the III Additional District and Sessions Court, Virudhachalam, Cuddalore District, pending Criminal Appeal.

For Petitioner : Mr.R.Chakkaravarthy

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.This appeal has been filed against the judgment dated 09.07.2019 in S.C.No.17 of 2018 by which the appellant was sentenced to life imprisonment for murdering one Dharman, who was working as Maistry under P.W.3 Murugesan, Sub-Contractor, on 08.06.2017 for gain. The present petition has been filed to suspend the sentence imposed on the petitioner.

3.Mr.R.Chakkaravarthy, learned counsel appearing for the petitioner would submit that there is no direct evidence and the prosecution case is only based on circumstantial evidence and last seen theory which the prosecution has failed to prove. According to him, the appellant and the deceased were working under P.W.3 as Maistry and Driver respectively. Though the prosecution would submit that P.W.1 saw the deceased and the accused, there is a time gap and also it is in different places. Even recovery mahazar witnesses P.W.9 and P.W.10 turned hostile and therefore, the recovery is not proved as per law. He would submit that P.W.13 spoke about the recovery of the knife in which there are no blood stains whereas P.W.7/Doctor spoke about blood stains and there is a contradiction in the

prosecution case. When recovery of M.O.2 and M.O.3 is not proved as per law, the same cannot be relied upon. The case of the prosecution is that both the accused and deceased travelled together in a motorcycle. However, the investigating officer has not collected any evidence with regard to the ownership of the motorcycle. Further, the learned counsel elaborately would argue that details regarding the money transactions with regard to ATM card have not been collected. These are the material facts which the prosecution failed to prove. Therefore, in the absence of any direct evidence, the appellant should not have been convicted and there are arguable points involved in this case. Therefore, he seeks for suspension of sentence imposed on the petitioner.

4. However, Mrs.M.Prabhavathy, learned Additional Public Prosecutor appearing for the respondent would submit that though the prosecution case is that it is a murder for gain, the gain has not been achieved by the convict as he surrendered before P.W.10/V.A.O. and confessed that he has committed the murder. However, the murder has been executed, as pre-planned by him. The motive has been explained by recovery of the ATM card from the accused at the time of extra judicial confession made before P.W.10. That apart, P.W.1 spoke about the travel of both the accused as well as the deceased. P.W.2, who is a friend of the deceased saw the body of the deceased the next day i.e., on 09.06.2017 at

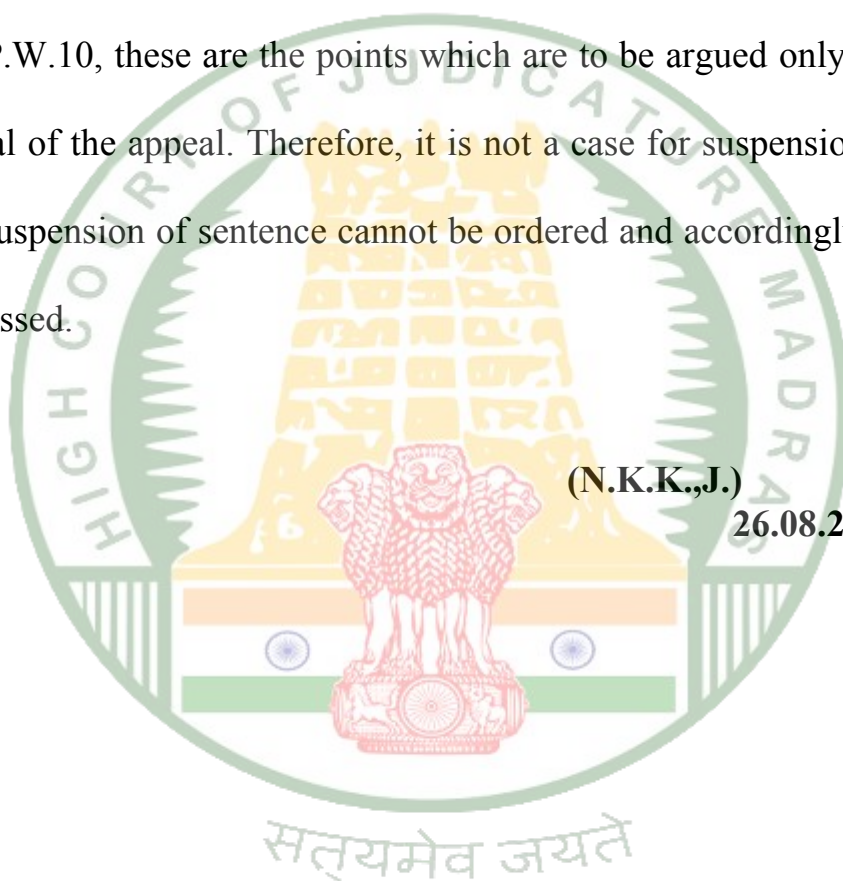
6.00 a.m. Since the last seen theory has already been proved by P.W.1, there is no explanation from the defence side as to what had happened thereafter. Therefore, the trial Court, on appreciation of evidence, rightly convicted the appellant and it is not a fit case for suspending the sentence, she would stress.

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

6. It is an admitted case that the prosecution case is based on last seen theory and circumstantial evidence. The last seen theory has been categorically proved by P.W.1, who is the cousin and co-worker of the deceased as well as the accused. According to P.W.1, he asked money from the deceased and at that time, both the deceased and accused went together to ATM centre and the deceased withdrew money using his ATM card. At that time, the accused noted the secret number i.e, 2658. Since the accused found that more money was available with the deceased, he planned to murder him. P.W.1's evidence would prove the last seen theory and P.W.2 spoke about the finding of the body of the deceased on the next day. P.W.10 before whom the extra judicial confession was made, spoke about the recovery of the ATM card from the accused. Based on the confession, the recovery

of M.O.1 – knife was made. The defence has not given explanation as to how the convict came into possession of the ATM card of the deceased. Though Mr.R.Chakkaravarthy, learned counsel appearing for the petitioner very elaborately argued about the inconsistencies and contradictions in the evidence with regard to blood stains and also reliance on the evidence of hostile witnesses P.W.9 and P.W.10, these are the points which are to be argued only at the time of final disposal of the appeal. Therefore, it is not a case for suspension of sentence. Therefore, suspension of sentence cannot be ordered and accordingly, this petition stands dismissed.

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(N.K.K.,J.)

(V.M.V.,J.)

26.08.2020

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N.KIRUBAKARAN, J.
AND
V.M.VELUMANI, J.

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To

1. Inspector of Police
Neyveli Township Police Station
Cuddalore District.

2. III Additional District and Sessions Court
Virudhachalam, Cuddalore District.

3. The Public Prosecutor
High Court of Madras.



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