



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twelfth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.7008 of 2020
IN
CRL A(MD) No.363 of 2020

SEENIVASAN

... APPELLANT/ACCUSED No.1

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
THENI POLICE STATION,
THENI DISTRICT.
CRIME NO. 600 OF 2013.

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence passed by the judgment dated 12.08.2020 made in S.C.No. 18 of 2016 on the file of Additional District and Sessions Court, Theni and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL A(MD) No.363 of 2020:

To call for the records relating to the judgment dated 12.08.2016 made in S.C.No.18 of 2016 on the file of Additional District and Sessions Court, Theni and set aside the conviction and sentence imposed against the appellant/accused No.1 and allow above appeal by acquitting the accused.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.GANDHI, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

Reserved on : 02.03.2021

Pronounced on : 12.03.2021

(Order of the Court was made by G.ILANGO VAN, J)

This Criminal Miscellaneous Petition is filed to suspend the sentence passed by the Additional District and Sessions Judge (FTC),

<https://hcservices.ecourts.gov.in/hcservices/>



Theni, in SC No.18 of 2016, dated 12.08.2020 and enlarge the petitioner/Appellant on bail, pending disposal of the criminal appeal.

2.The case of the prosecution is that on 02.09.2013, when the deceased Govindarajan was proceeding to Theni bus-stand from his house, A1 waylaid him and stated that the camera missing from his studio buried in Theni Annanji bye-pass road Reserve Forest area and emplaned the deceased to the forest area and offered a cool drink mixed with psychotropic substance and then, A1 and A2 attacked the deceased with billhook and taken away two gold rings and Rs.500/- and a cell phone and pushed the body of the deceased inside the trench and buried him. Thereafter, A1 contacted one Muralidharan/PW2, who is son-in-law of the deceased Govindarajan and informed that the deceased was having illegal intimacy with a north Indian woman and the memory card containing the photos is in the foot-mat of the motor cycle of the deceased, parked near Hindustan Petrol Bulk at Chinnamanur and demanded money for screening the offence.

3.To prove the charges, the prosecution examined 35 witnesses and marked 34 documents and MO1 to MO23. On the side of the accused, no witness was examined and no document was marked.

4.The trial court, after considering the materials available on records, came to the conclusion that the charges framed under sections 379, 302 and 201 IPC against the petitioner/A1 have been proved beyond all reasonable doubt and convicted and sentenced him to undergo 3 years Rigorous Imprisonment for the offence under section 379 IPC and sentenced to undergo 7 years Rigorous Imprisonment with fine of Rs.2,00,000/-, in default to undergo 2 years Simple Imprisonment for the offence under section 201 IPC and sentenced him to undergo Life Imprisonment with a fine of Rs.3,00,000/-, in default to undergo 3 years Simple Imprisonment for the offence under section 302 IPC. Aggrieved by the judgment of the trial court, the present petitioner/A1 has filed a criminal appeal before this court. Pending appeal, the petitioner has also filed the present petition for suspension of sentence imposed on him.

5.According to the learned counsel for the petitioner, it is a case of circumstantial evidence and connecting links have not been proved by the prosecution on the following grounds:-

(i)The arrest, confession statement and recovery have not been proved by the prosecution. It is the case of the prosecution that A1 was arrested on 06.09.2013 at about 9.30 am near Sivaram Nagar Junction in Theni bypass road. The confession was recorded in the presence of PW7 and in pursuance of which, the body of the deceased was exhumed in the presence of the Revenue Officials. But PW7 has not spoken about the identification of the body by the petitioner, <https://hseverps.ecourt.gov.in/> has stated about some material objects were



recovered. So, there is no connecting link between the petitioner/A1 and the deceased.

(ii)The next contention is that even as per the version of PW7, he has not signed in the place where the body was found and only on the next day i.e., on 07.09.2013, signatures were obtained from him in the police station.

(iii)The next contention is that the genesis of the case itself is highly doubtful, as it is the case of the prosecution that only on the basis of the confession from A1, the case was altered into 364-A IPC. But as per the evidence of the Investigating Officer, on 06.09.2013 at 8.00 am itself, the case was altered and alternation report was sent to the concerned Court. So, the arrest alleged to have been made at 9.30 am, on 06.09.2013 is doubtful.

(iv)Similarly in the Athachi, it has been stated that one crowbar, iron plate and Spade were recovered from A2 on the basis of his confession. But in the alternation report, it has been stated that only on the basis of the confession statement made by the petitioner herein, those material objects were recovered. The explanation offered by the Investigating Officer is not acceptable.

(v)The next ground is that the memory card alleged to have used by the deceased is inadmissible in evidence due to the absence of certificate under section 65-B of the Indian Evidence Act and the CDR reports were obtained by the Investigating Officer only with regard to the cell phone used by the deceased and not the accused. After 03.09.2013, photo of the 1st accused was taken as print out from the memory card, no certificates as provided under section 65-B were produced. Similarly, PW9 had not identified the accused. So the last seen theory projected by the prosecution has not been established. According to the learned counsel, in spite of these lapses on the part of the prosecution in proving guilt of the accused, the trial court has come to the conclusion that the guilt of the petitioner was proved and hence, he is entitled to suspension of sentence and release on bail.

6.Per contra, it is the contention on the part of the Additional Public Prosecutor that PW1 and PW2 are husband and wife and the deceased is the father of PW1. The 2nd accused was under severe financial stress since he was under suspension and required money and only on the basis of the confession statement given by A1, the body was exhumed and PW9 and PW10 also supported the case of the prosecution that they saw the accused accompanying the deceased during the relevant time and as such, since it is a case of murder for gain, the petitioner is not entitled to the relief of suspension of sentence.

7.Heard both sides and perused the materials available on



8.Originally two accused were charged before the trial court. Pending trial, A2 Marichamy died. So, the charges against him abated. As mentioned by the learned counsel appearing for the petitioner, there is no eye witness to the occurrence and the entire prosecution story rests only upon the circumstantial evidence and as such, the last seen theory as spoken by PW9 and PW10 and arrest and recovery and identification of the body of the deceased at the instance of A1 on the confession. Even though, PW7 has not spoken in clear terms that only in pursuance of the confession statement made by A1, the body of the deceased was exhumed in the presence of the revenue officials, without identification of the place of burial by the petitioner, the Investigating Officer could not have identified the place.

9.How-far the lapses on the part of PW7 in non mentioning these particular facts during evidence affect the case of the prosecution can be decided only at the time of argument in the main appeal. Further, MO7 and MO8, which belonged to the deceased were recovered at the instance of A1 on the confession. The same were identified by PW1, the daughter of the deceased.

9.It may be premature on the part of the Court to record any opinion over the evidence available on record projected by the prosecution. Reliability of these evidences can be decided only at the time of final hearing and not at the stage of considering suspension of sentence. The discrepancies and lapses pointed out by the learned counsel for the petitioner cannot be considered materials available in favour of the petitioner for considering suspension of sentence.

10.The nature of the offence and the manner in which it was committed disentitle the petitioner from claiming the benefit of suspension of sentence. We find that no strong case has been made out by the petitioner for getting benefit of suspension of sentence. So, accordingly, we find no merit and the petition deserves dismissal and accordingly, **dismissed**.

sd/-
12/03/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTC),
THENI

<https://hcservices.ecourts.gov.in/hcservices/>



2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3.THE INSPECTOR OF POLICE,
THENI POLICE STATION, THENI DISTRICT.

4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to Mr.R.GANDHI, Advocate (SR-2105[I] dated 15/03/2021)

ORDER
IN
CRL MP(MD) No.7008 of 2020
IN
CRL A(MD) No.363 of 2020
Date :12/03/2021

dss
AE/JC/SAR-I (17/03/2021) 5P / 6C