



Crl.M.P.No.7751 of 2022 ...
Crl.A.No.580 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2022

PRONOUNCED ON:21.09.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.M.P.Nos.7751 of 2022

in

Crl.A.No.580 of 2022

Ravindra Kumar

.. Petitioner/Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
Kavundapadi Police Station,
(Crime No.10 of 2010)
Erode – 638 455.

.. Respondent/Complainant

Common Prayer: Criminal Miscellaneous Petition filed under Section 389 of Cr.P.C. to suspend the sentence imposed in S.C.No.64 of 2020 on the file of III Additional District and Sessions Judge, Erode at Gobichettipalayam dated 26.04.2021 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.S.Manoharan

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

RMT.TEEKAA RAMAN, J.

The Convicted sole accused seeks suspension of sentence granted in S.C.No.64 of 2020 dated 26.04.2021.

2. The petitioner/accused was convicted under Sections 302 and 201 of I.P.C and sentenced to undergo life imprisonment for the offence under Section 302 (2 counts) and to pay a fine of Rs.1,000/- for each count in default to undergo one-year simple imprisonment for each count and under Section 201 of I.P.C, sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo one year simple imprisonment. The period of detention already undergone ordered to be set off under Section 428 of Cr.P.C. So, the total fine amount is Rs.3000/- by the learned III Additional District and Sessions Judge at Erode at Gobichettipalayam, in S.C.No.64 of 2020, dated 26.04.2021 and the fine amount of Rs.3,000/- paid by the appellant/accused.

3. The case of the prosecution in brief is that:-

a) The defacto complainant A.Ramesh is residing at Tamilan street, P.Mettupalayam, Bhavani Taluk and running a weaving unit in the building owned by one Thirunavukkarasu at Kallukadai medu, P.Mettupalayam. Turkey Towels are produced in the unit.



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b) The accused hailing from Jharkhand was working in the unit. The deceased namely, Sudendrakumarvarma @ Mukesh & Naveenkumar, Sourapranjan also worked in the unit. Sourapranjan is residing with his wife Priyankakumari near the weaving unit for rent. Accused, Sudendrakumarvarma @ Mukesh and Naveenkumar used to stay in a room at upstairs of the office of the defacto complainant.

c) It is the further case of the prosecution on complaint that the accused and the deceased were quarrelling in the office complex attached to the textile mill run by him, P.W.1-Ramesh Sourapranjan and his wife Priyankakumari went to the unit and asked the accused and searched the deceased. At about 5.00 a.m., they found four legs visible underneath the waste cloth bundles and by the time the accused ran away from the unit.

4. P.W.1 and others removed the waste cloth bundles and saw that both the deceased were found lying with blood stained injuries. P.W.1 went to Kavundapadi Police Station on 06.01.2020 and filed a written complaint. As per the request made by the Inspector of Police on 07.01.2020, P.W.1 proceeded along with the P.W.15-Kannan. P.W.5-Senkuttuvel, P.W.6-Velliyangiri and witness Sathishkumar also went along with P.W.15 towards Erode road. At about 3 p.m., when they were nearing Chithode four road, in the Erode bus stop, P.W.1 spotted the accused who stood near a bakery. He identified the accused to P.W.15 Kannan. P.W.15 came down from his jeep, enquired the accused through P.W.6-



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Velliyangiri, recorded confession statement and recovered material objects. So is final report.

5. The learned Additional Session Judge, Gobichettipalayam has framed charge under Section 302 (2 counts) I.P.C.

6. During the trial, P.W.1 to P.W.15 were examined and Exs.P1 to P29 and M.O.1 to M.O.15 were marked.

7. On consideration, the learned Sessions Judge has laid the conviction and sentence as stated supra and hence the appeal. Pending appeal, the sole convicted accused has sought for suspension of sentence.

8. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor (Crl.Side).

9. It is a double murder case.

10. The petitioner/appellant stands charged for offence under Section 302 I.P.C (2 counts).

11. It's a case of circumstantial evidence. The prosecution relied upon the evidence of P.W.1, P.W.2 and P.W.6.



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12. Last seen theory was adopted by the learned Session Judge and held that the presence of the accused in the company of the deceased Sudendrakumarvarma @ Mukesh and Naveenkumar, was spoken to by P.W.1 and when P.W.1 went in search of the deceased in the office, he noticed that 4 legs were found below the cotton bundle and subsequently the accused ran away from the scene.

13. P.W.3–Vadivelu has seen the accused with the M.O.4 at 2.00 a.m on the same night. P.W.6–Velliyangiri is the person who had assisted the Investigation Officer P.W.15 in recording the confession statement said to have been given by the accused in Hindi and translated to Tamil.

14. It remains to be stated that during the Section 313 questioning also the learned Session Judge has taken the assistance of the Court staff who is familiar in Hindi and the certificate issued by Dakshina Bharat Hindi Prachar Sabdha, Madras about the Master Degree [M.A.] in Hindi by the Tmt.Premalatha was also annexed with the 313 questioning. With regard to the Hindi qualification of P.W.6, it appears that the prosecution filed C.M.P.No.35 of 2021 which was marked for marking of the qualification of P.W.6 regarding knowledge in Hindi which is Ex.P29.



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15. The trial Court accepted the case of the prosecution based upon the evidence of P.W.1 and P.W.2 regarding the presence of the accused in the company of the two deceased persons and P.W.3 have seen the accused with the M.O.4 weapon of crime around 2.00 A.M in the morning and with regard to the confession statement to the police, P.W.6 along with Ex.P29 were relied as to non-recording of the confession statement in Hindi as spoken by the accused instead translation copy has been given.

16. For the limited purpose of the grant of suspension, we are satisfied with the evidence of the P.W.6 regarding recording of the confession statement of the accused by the police as to understanding of accused statement in the Hindi language and translated the same to Tamil and also due opportunity was given to the accused to give the answer for Section 313 questioning the services of the court staff has been deployed in questioning and recording of answers in Hindi and in view of the specific finding by the trial Court on the charge of Section 302 (2 counts) , we are not inclined to grant the suspension for the present.

17. At this juncture, pertinent it is to point out that the Supreme Court, in *Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) [(2008) 5 SCC 230]*, has held as follows:



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“30. In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.” (emphasis supplied)

18. With these observations, the Crl.M.P.No.7751 of 2022, stand dismissed.



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19. We observe that the finding rendered by us is limited only for the purpose of disposal of this Criminal Miscellaneous Petition and we are not expressing any opinion on the main appeal.

(P.N.P.J.) (T.K.R.J.)
21 .09.2022

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To

1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam
2. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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