

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.105 of 2016 and Crl.M.P. No.31 of 2016

1 G. Duraisamy

2 T. Dhanavel

3 A. Sri Ranganathan Petitioners
vs.

The State represented by:
The Inspector of Police
Katpadi P.S.
Crime No.1021 of 2012

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to set aside the impugned order passed by the I Additional District & Sessions Judge at Vellore in Crl.M.P. No.107 of 2015 in S.C. No.326 of 2013 on 27.11.2015.

For petitioners Ms. Thanga Vadhana Balakrishnan

For respondent Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition is filed to set aside the order dated 27.11.2015 passed by the I Additional District & Sessions Judge, Vellore, in Crl.M.P. No.107 of 2015 in S.C. No.326 of 2013.

2 Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent State.

3 It is the case of the prosecution that between 4 p.m. on 14.05.2012 and 00.45 hours on 15.05.2012, the accused herein have administered alcohol to the deceased Vinayagam and after killing him, they have thrown the body on the railway track to conceal the offence. On complaint, a case in Katpadi P.S. Crime No.1021 of 2012 for offences under Section 302 read with 120-B IPC and Section 302 read with 201 IPC was registered and after completing the investigation, final report was filed on

19.12.2012. Now, the case is pending trial in S.C. No.326 of 2013 before the I Additional District and Sessions Judge, Vellore.

4 During trial, the accused initially engaged one R. Vanitha as counsel and thereafter, engaged one Dominic Vijay and Gayathri who appeared for the accused on 26.06.2015. The trial commenced on that date and the prosecution examined P.W. 1 to P.W.12 and the evidence was closed. The accused were examined under Section 313, Cr.P.C. on 02.11.2015. Thereafter, the accused changed their counsel and engaged one Sivajothi, who entered appearance on 02.11.2015 and filed a petition in C.M.P. No.107 of 2015 under Section 311 Cr.P.C. to recall P.W. 1 to P.W.6 and P.W.10 for cross examination, which was dismissed by the Trial Court by a well considered order on 27.11.2015, challenging which, the petitioners are before this Court.

5 Section 309 Cr.P.C. mandates that when a witness is present in the Court, it is incumbent on the Court examine him. Fourth proviso to Section 309 (2) Cr.P.C., as amended by Code of Criminal Procedure (Amendment) Act, 2008, reads as follows:

"Provided also that--

a no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

b the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

c where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

6 The Supreme Court, in Vinoth Kumar vs. State of Punjab [2015 (1) MLJ (Cr1.) 288], has held that a witness should be cross examined on the same day he is examined-in-chief. That apart, in A.G. Vs. Shiv Kumar Yadav and another, [(2015) 9 Scale 649], the Supreme Court has laid down the parameters for exercise of powers under Section 311 Cr.P.C. In fact, in the said case, the accused was in custody and the Supreme Court held that it cannot be a reason for recalling witnesses at the mere asking of the accused party.

7 In this case, the petition by the accused under Section 311 Cr.P.C. is indeed very bald and it does not give any reason

for the Court to exercise its powers. Therefore, this Court does not find any infirmity in the order passed by the Court below. That apart, this Court perused the evidence of P.Ws. 1 to 6 and 10 and found that they are not eye witnesses to the occurrence. However, taking note of the gravity of the offence, this Court is of the considered view that interest of justice would be subserved, if one opportunity is given to the accused to cross examine Annamalai (P.W.1) and Dilip Kumar (P.W.6) on payment of costs of Rs.1,000/- to each of them and it is ordered accordingly.

8 The Trial Court is directed to fix a date and recall Annamalai (P.W.1) and Dilip Kumar (P.W.6), if they are available for giving evidence and on the day they appear, the accused shall pay Rs.1,000/- to each of them and cross examine them. Boycott of courts cannot be a reason to refrain from cross examining the witnesses, when they appear on the date fixed by the Trial Court. If the accused adopt any dilatory tactics, it is open to the Trial Court to remand them to custody in the light of the law laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath [JT 2001 (4) SC 319]. This entire exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

With the above direction, this Criminal Original Petition stands disposed of. Connected Crl.M.P. is closed.

Sd/-
Asst. Registrar,
/true copy/
Sub Asst. Registrar.

cad

To

- 1 The Inspector of Police
Katpadi P.S.
 - 2 The I Additional District & Sessions Judge
Vellore
 - 3 -do- through the Prl. Sessions Judge, Vellore.
 - 4 The Public Prosecutor, High Court of Madras
Chennai 600 104
- + 1 CC to Ms. Thanga Vadhana Balakrishnan, advocate SR NO 36165
Crl.O.P. No.105 of 2016

RSY[CO]
GP/20.7.