Crl.M.P.No.1616 of 2016 in Crl.A.No.311 of 2014

M.JAICHANDREN, J.
AND
S.NAGAMUTHU, J.,

[Order of the Court was made by **S.NAGAMUTHU, J.,**]

The petitioner is the 2nd accused in S.C.No.107 of 2013 on the file of the learned Sessions Judge, Mahila (Fast Track) Court, Erode. He has been convicted for the offences under Sections 302 read with 34, 392 and 201 of IPC. The minimum punishment imposed upon him is imprisonment for life. Challenging the said conviction and sentence, the petitioner has preferred an appeal before this Court. Pending appeal, the petitioner/2nd accused has come up with this petition seeking suspension of sentence.

2. We have heard Mr.N.Manokaran, the learned Counsel for the petitioner and Mr.S.Shanmugavalayutham, the learned Public Prosecutor appearing on behalf of the respondent and we have also perused the records carefully.

3. The learned Counsel for the petitioner would submit that absolutely, there is no evidence against this petitioner, who happened to be the 2nd accused in this case and the entire evidences which have been collected and let in before the court, are only against the 1st accused. He would further submit that on a telephonic conversation between P.W.7 and this accused, the deceased was sent for the purpose of immoral trafficking and the call details have not been collected. He would also submit that

though there is evidence that Ms.Kavitha is found missing and though there is evidence that a dead body was found elsewhere, there is no link established that the said dead body was that of the missing woman. The learned Counsel for the petitioner would further submit that no efforts have been taken to identify the dead body either by means of D.N.A. Examination or by means of Super Imposition Test. Thus, according to the learned Counsel for the petitioner, absolutely, there is no evidence against the 2nd accused and conviction and sentence were recorded by mere surmise.

4. The learned Public Prosecutor appearing on behalf of the respondent would submit that the call details of the telephonic conversation between the accused and P.W.7 have not been collected by the Investigating Officer. He would further submit that it is true that the DNA examination was not conducted because the parents of the deceased could not be traced. He would also submit that the Super Imposition Test also could not be conducted since the life photograph of the deceased was not available. He would further submit that the dead body of the deceased has been identified from and out of the clothes found on the dead body of the deceased. He would also bring to our notice that the accused is involved in 4 such cases which are similar in nature.

5. We have considered the above submissions.

6. At the outset, we would like to state that we do not want to meticulously examine the grounds raised by the petitioner for the purpose of this petition. Though we find some force in the argument of the learned Counsel for the petitioner, on that score, we are not inclined to suspend the sentence. It is not as though, the petitioner is involved in this case alone. By the recording of the conviction by the trial court, the presumption of innocence in favour of the accused has been now lost. Apart from that, it has been pointed out by the learned Public Prosecutor that there are 3 other cases of murder pending against the accused. In our considered opinion, suspending the sentence in this case would not be in the larger interest of the society, going by the number of murder cases in which he is involved and also going by the materials available on record, we find this is not a fit case to suspend the sentence pending appeal.

7. In the result, the petition fails and the same is accordingly dismissed.

[M.J., J.] [S.N.J.,]

tsi 15.03.2016

M.JAICHANDREN, J.
AND
S.NAGAMUTHU, J.,

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15.03.2016

10.02.2016