

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirteenth day of December Two Thousand Eighteen

PRESENT

The Hon`ble Mrs Justice C. T. SELVAM

and

The Hon`ble Mr Justice S. RAMATHILAGAM

CRIMINAL MISCELLANEOUS PETITION No.15246 of 2018

IN CRL A.720/2018

1 BASHA @ BADHUSHA

[PETITIONERS]

2 BASHEER SAYABU

3 AMNU @ ABINABI

4 ASINA

Vs

STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,

KALLAVI POLICE STATION,

CR.NO.93 OF 2013,

KRISHNAGIRI DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.720/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed on the petitioners by judgment dated 17.10.2018 and made in S.C.No.52 of 2014 on the file of the Sessions Judge Fast Track Mahila Court, Krishnagiri and enlarge the petitioners on bail pending disposal CRL.A.No.720 OF 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.720/2018 on the file of the High Court and upon hearing the arguments of MR.V.GOPINATH, SENIOR COULSEL FOR MR.L.MAHENDRAN Advocate for the petitioner and of M/S.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by **C.T.SELVAM, J**]

Petitioners, who are arrayed as A.1 to A.4, faced trial in S.C.No.52 of 2014 on the file of learned Sessions Judge, Fast Track Mahila Court, Krishnagiri. Trial Court, under judgment dated 17.10.2018, convicted and sentenced the petitioners as follows:-

Sl. Nos.	Rank of the Accused	Conviction passed by Trial Court	Sentence awarded by Trial Court
1.	A.1 to A.4	Section 302 IPC	Sentenced to undergo Life Imprisonment and to pay a fine of Rs.2,500/- each in default to undergo two years Rigorous Imprisonment.
2.	A.1 to A.4	201 IPC	Sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.2,500/- each in default to undergo one year Rigorous Imprisonment.

Seeking suspension of sentence, petitioners/A.1 to A.4 have moved the present petition.

2. The prosecution case is that the deceased was the second wife of the first accused, who is the son of accused Nos.2 and 3 while the fourth accused was his cousin. The deceased had witnessed an illicit occurrence between her husband, the first accused and the fourth accused and informed that she would bring it to the knowledge of the world at large. Accused 1 to 4 caused the death of the deceased at about 4.00 a.m. on 25.05.2013. A.1 carried the deceased and put her on a mat while A.2 and A.3 caught hold of her legs and A.4 caught hold of her hands. The first accused, her husband sat upon her chest and strangled her and caused death and thereafter, they poured kerosene over the body towards making it appear that the deceased had committed suicide.

3. Mr.V.Gopinath, learned Senior Counsel appearing for petitioners submitted that both A.1 and A.4 were persons working at Bangalore. In Chief, P.W.1 has deposed to the deceased having been seven months' pregnant at the time of occurrence, the first accused was attacked by the parents of the deceased and thereafter P.W.1 returned home and police came to the scene at 9.00 a.m. In cross examination, he has deposed that while examined by the police, he had not informed of being present at his house at 4.00 a.m. but he had been in Chennai. Further, the parents of the deceased beat the first accused at 8.00 a.m. and it was only thereafter, the father of the deceased informed police, who came and took A.1 away.

4. Learned Senior Counsel further submitted that P.W.17, Investigating Officer had stated that he had arrested the accused 1, 2 and 4 at about 7.00 a.m. on 26.05.2013 at Kerugepalli bus stop near Uthangarai Puliyur. While P.W.5 had spoken to the presence of A.4, he has stated in his chief examination that he had seen A.4 in a room in the house but he some how ran away, in cross, he had admitted that he had not informed the police of the presence of fourth accused in

the house of A.1 when the deceased was left there a few days before the occurrence. He admitted of not having informed police of A.4 having been in the house or having made a get away on the date of occurrence. P.W.7 had admitted to not seeing A.1 to A.3 at the scene. Further, the mother and sister of P.W.4, who had allegedly brought the deceased to A.1's house eight days prior to the occurrence, have not been examined. P.W.4 had admitted to the first accused having gone away to Bangalore to take up work in a bakery having informed that he was unable to maintain a puncture shop set up for him by the father of the deceased. Pointing out the above discrepancies, learned Senior Counsel submitted that there is absolutely no reliable evidence of the presence of A.1 to A.4 at the scene when the deceased had met her death.

5. Learned Additional Public Prosecutor heavily relied on the judgment of the trial Court and particularly submitted that admittedly, the medical evidence clearly informed the death to be one owing to strangulation. There were no soot particles in the trachea and lungs of the deceased and therefore, the body of the deceased had been subjected to burning after the death.

6. Considering the facts and circumstances of the case and also considering the rival submissions made by the learned counsel on either side, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to petitioners herein.

7. Accordingly, the substantive sentence of imprisonment alone is suspended and petitioners are directed to be enlarged on bail on condition that each of the petitioners shall execute a bond in a sum of Rs.10,000/- [Rupees Ten Thousand only] with two sureties each for a like sum to the satisfaction of learned District Munsif-cum-Judicial Magistrate, Uthankarai, and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
13/12/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
KRISHNAGIRI.

2 THE DISTRICT MUNSIF-CUM-
JUDICIAL MAGISTRATE, UTHANKARAI.

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
KALLAVI POLICE STATION,
KRISHNAGIRI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

6 THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN,
VELLORE.

7 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1C.C. to MR.L.MAHENDRAN Advocate on payment of necessary
charges in SR.NO. 23923

Order

in
CRL MP.15246/2018

in
CRL A.720/2018

Date :13/12/2018

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MLT-17/12/2018