

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Eleventh day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.8260 of 2019

IN CRL.A.NO.379 OF 2019

1 KUMAR
2 MARIMUTHU

[PETITIONERS]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
DHALI POLICE STATION,
COIMBATORE DISTRICT.
(CR.NO.158 OF 2013)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.379/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in S.C.No.214 of 2014 passed by the learned III Additional District and Sessions Judge, Tiruppur @ Dharapuram by a judgment dt 23.7.2018 and enlarge the petitioner on bail pending disposal of the above CRL.A.NO.379/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.379/2019 on the file of the High Court and upon hearing the arguments of M/S.BALASUBRAMANIAM K., Advocate for the petitioner and of MR.R.PRATHAP KUMAR Addl.Public Prosecutor on behalf of the Respondent the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioners have been arrayed as A1 and A2 in S.C. No. 214 of 2014 on the file of the III Additional District and Sessions Court, Dharmapuri. The Trial Court, by judgment dated 23.07.2018, convicted the petitioners for the offence punishable under Sections 302 and 120B IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.3,000/- for each offence, in default to undergo six months simple imprisonment for each offence and for the offence under Section 201 IPC, sentenced to undergo four years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months simple imprisonment. The sentences were ordered to run concurrently. Seeking suspension of sentence, the present petition

2. The case of the prosecution is that the first petitioner has money dealing with the deceased. Pursuant to the dispute, he along with the other accused attacked the deceased and thereafter took the body in TVS 50, which was dumped in a well.

3. The learned counsel appearing for the petitioners would submit that it is a case of circumstantial evidence. The trial Court convicted the petitioners without any cogent evidence linking them with the offence alleged to have been committed. The conviction has been rendered only based upon the extra judicial confession made before P.W.8. P.W.8 has deposed that he did not know how to read and write. He further stated that he did not know the content. It is the evidence of P.W.8 that the confession statement was written by the police officer. Therefore, the very recovery itself is doubtful. The motive assumes some importance. The motive has also not been established as even according to the prosecution the deceased was creating trouble in the family of A1, which is also not proved. Thus, the suspension of sentence petition will have to be allowed.

4. The learned Additional Public Prosecutor would submit that inasmuch as the recovery having been made, the trial Court rightly convicted the petitioners. Therefore, this petition will have to be dismissed.

5. As stated by the learned counsel appearing for the petitioners, we are dealing with a case of circumstantial evidence. *Prima facie*, we are of the view that the motive part has not been established. A perusal of the evidence of P.W.8 would show that he did not know how to write nor he knew the contents of the confession statement given. The statement is also written by a lady police officer. Thus, we are of the view that there are arguable points involved in the appeal. Further more, the petitioners are in incarceration for nearly one year. The judgment was rendered on 23.07.2018.

6. Considering the above, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioners execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of Judicial Magistrate No.I, Udumalpet and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

11/07/2019

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 JUDICIAL MAGISTRATE,
NO.I, UDUMALPET

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR[FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT
AND SESSIONS COURT,DHARMAPURI

4 THE SUPERINTENDENT,
CENTRAL PRISON,COIMBATORE

5 THE INSPECTOR OF POLICE,
DHALI POLICE STATION,
COIMBATORE DISTRICT.

+1 C.C. to M/S.BALASUBRAMANIAM K. Advocate on payment of
necessary charges SR.NO. 14079

Order

in
CRL MP.8260/2019

IN CRL.A.NO.379 OF 2019

Date :11/07/2019

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RD 11/07/2019

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