

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

Crl.MP.No.4242 of 2020
in Crl.A.No.404 of 2019

1.BilalPetitioners
2.Adhiru @ Kathiru @ Jayaraman @ Arthanari

-vs-

State Represented by Respondent
The Inspector Of Police
Karimangalam Police Station
Dharmapuri.

Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code, to suspend the sentence imposed in S.C.No.134 of 2017 by judgment dated 25.06.2019 passed by the Additional Sessions Judge, Dharmapuri, against the petitioners and enlarge the petitioners on bail pending disposal of the appeal.

For Petitioners : Mr.M.R.Thangavel

For Respondent : Ms.M.Prabhavathi,
Addl. Public Prosecutor

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.134 of 2017 on the file of the Additional Sessions Judge, Dharmapuri. The trial Court by judgment dated 25.06.2019, convicted the petitioners for the offence punishable under Section 302 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default, to undergo three months rigorous imprisonment. Seeking to suspend the sentence, the present petition has been filed.

2. The case of the prosecution is that the deceased was having illicit relationship with the sister of the first petitioner/A1. Therefore, the first petitioner with the help of the second petitioner/A2 administered poison to the deceased and throttled the throat with the hands. The trial Court convicted the petitioners based upon the extra judicial confession given before the Village Administrative Officer by A2 coupled with the evidence of P.W.21, who is the aunt of the deceased.

3. Learned counsel appearing for the petitioners submits that the petitioners have been in incarceration for more than one year. It is a case of circumstantial evidence. The link has not been established. Except the evidence of P.W.21 read with the uncorroborated evidence of the Village Administrative Officer, there is no material to implicate the petitioners. P.W.21 gave her 161 statement after ten days from the date of registration of the first information report, which was registered under Section 174 Cr.P.C, received by the Court after one month. Therefore, there is a serious doubt on the said statement given.

4. Learned Additional Public Prosecutor appearing for the State submitted that motive has been established. The deceased was having an affair with the sister of A1. That is the reason why A1 along with A2 committed the offence. The trial Court has relied upon the evidence of P.W.21 and the evidence of Village Administrative Officer and, therefore, the petition will have to be dismissed.

5. We do find the existence of requisite points for consideration in the appeal. The evidentiary value of P.W.21 and that of the Village Administrative Officer has to be seen. We are dealing with the case of circumstantial evidence. Initially, the case was registered under Section 174 Cr.P.C. and thereafter converted into one under Section 302 IPC. There appears to be some delay in receiving 161 statement. The sister of A1 has also not been examined for the reasons known to the prosecution.

6. Considering the above and taking into consideration the period of incarceration, as the petitioners are under custody for more than one year, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioners execute their own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each to the satisfaction of the The Superintendent, Central Prison, Vellore, and on further condition that they shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

30/06/2020

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

TRUE COPY

TO

1 THE ADDITIONAL SESSIONS JUDGE,
DHARMAPURI.

2 THE JUDICIAL MAGISTRATE,
PALACODE.

3 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
KARIMANGALAM POLICE STATION,
DHARMAPURI.

5 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

C.C. to M/S.M.R.THANGAVEL Advocate on payment of necessary
charges

Order

in
CRL MP.4242/2020
in CRL.A.No.404/2019

Date :30/06/2020

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