

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Second day of November Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice D. KRISHNAKUMAR

CRIMINAL MISCELLANEOUS PETITION No.6229 of 2020

IN CRL.A.No.917 OF 2019

1 MARIYAPPAN
2 TAMILKUMARAN
3 GOVINDARAJ

[PETITIONERS]

Vs

STATE BY
THE INSPECTOR OF POLICE,
SAMALPATTI P.S.,
CR.NO.07/2016.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.917 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by Additional District Sessions court Krishnagiri in SC.No.194 of 2016 dated 03.12.2019 and enlarge the petitioners on bail pending disposal of the above Crl.A.No.917/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.917 OF 2019 on the file of the High Court and upon hearing the arguments of M/S N.ANANTHA PADMANABAN Advocate for M/S.APN LAW ASSOCIATES for the petitioner and of MR. K.PRABAKAR, ADDITIONAL 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 A3, A4 and A5 being the father-in-law and brother-in-law of A2. The third petitioner has been arrayed as A5, he is the one who stated to be helped the other accused in taking the body of the deceased from where it was found. Seeking suspension of sentence, the present petition has been filed. Trial Court, under judgment dated 03.12.2019, convicted the petitioners and sentenced them as follows:

Petitioner/Accused	Conviction	Sentence
Petitioner/ A-1 to A-5	Section 120-B IPC	Life Imprisonment and to pay a fine of Rs.5,000/- by each in default to undergo simple imprisonment for 6 months.
Petitioner/A-1 to A-4	Section 302 IPC	Life Imprisonment and to pay a fine of Rs.5,000/- by each in default to undergo simple imprisonment for 6 months.

Petitioner/A-1 to A-4	Section 201 IPC	7 years Rigorous Imprisonment with fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months.
Petitioner/A5	Section 201 r/w 302 IPC	7 years Rigorous Imprisonment with fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months.

2. The case as projected by the prosecution is that the deceased was having illegal intimacy with A2 and enraged over it, the petitioners/A3 and A4 made A2 to call the deceased and thereafter attacked him. The trial Court convicted all the accused for the offence punishable under Section 302 IPC by rendering life imprisonment.

3. The learned counsel for the petitioners submitted that it is a case of circumstantial evidence and the link has not been properly tied with the events as projected by the prosecution. The recovery from A2 is highly doubtful. There is neither a last seen theory nor any eye witness involved. There is a total discrepancy between Ex.P.5 and the evidence of PW1 and PW3. Even otherwise it is beyond comprehension that the accused who was smart enough to take the body of the deceased and place it in an unknown place, keep the keys belonging to him, while his vehicle was parked in a far away place. Therefore, it is a case where Section 3 of Evidence Act ought to have been applied by the trial Court. This Court on an earlier occasion while dismissing the application filed by the petitioners suspended the sentence in so far as A1 and A2 are concerned. In so far as A2 is concerned the recovery is said to have been only from her custody. Thus, it is the confession made by her leading to discovery of a fact which is sought to have been used against the other accused. A1, who is said to have strangled the deceased and his sentence has been suspended. Therefore, looking from any perspective, these petitioners are entitled to get their sentence suspended. In so far as A5 is concerned, the allegation is that he helped the other accused in disposing of the body of the deceased.

4. The learned Additional Public Prosecutor appearing for the State submitted that the hair as found in the vehicle used for carrying the deceased tallied with that of accordingly as per the evidence adduced. Any small discrepancy cannot be shattered to suspend the sentence. The trial Court considered the evidence in proper perspective while convicting the accused. Recovery has been made from the custody of A2 and it has been proved accordingly by complying with Section 27 of Indian Evidence Act..

5. As rightly submitted by the learned counsel for the petitioners, we are concerned with the case involving circumstantial evidence. There is no last seen theory involved, therefore we have to seriously consider the evidentiary value of recovery said to have been made. In the case on hand, the recovery is a key of a vehicle owned by the deceased. PW1 and PW3 even in their chief examination clearly say that the vehicle owned by him is Hero Honda. Whereas Ex.P5 says that it is a TVS bike Key. Even otherwise, on a prima facie consideration, we find that it defies logic for A2 to keep the keys with her while disposing the body especially when the vehicle was admittedly stationed in a different place. Further more, the petitioners are under incarceration from 03.12.2019 onwards. Though this Court rejected the earlier application filed on behalf of the petitioners, we do find that they have not differently placed than the others. As stated already, a specific overt act as against A1 and recovery has been made from A2, who is charged for the offence under Section 302 r/w 120(b) IPC. Thus, we are of the view that the petitioners are entitled for suspension of sentence accordingly.

6. Thus, considering the above, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioner shall execute their own 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, Uthangarai and on further condition that the petitioners shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

02/11/2020

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,
UTHANGARAI

2 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI (FOR INFORMATION)

3 THE ADDITIONAL DISTRICT
SESSIONS COURT, KRISHNAGIRI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
SAMALPATTI POLICE STATION,

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

C.C. to M/S.APN LAW ASSOCIATES Advocate on payment of necessary
charges Sr.7235

Order

in
CRL MP.6229/2020

IN CRL.A.No.917 OF 2019

Date :02/11/2020

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RVR 03/11/2020

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