

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP Nos. 7600 & 8867 of 2020

in Crl.A Nos. 553 & 568 of 2019

Magi @ Mageswaran @ Magesh Kumar ... Petitioner
in Crl MP No. 7600/20

Boopathy ... Petitioner
in Crl MP No. 8867/20

vs

State rep. by
The Inspector of Police,
R8 Vadapalani Police Station,
Chennai. ... Respondent
in both

Petition filed under Section 389(1) r/w 439 of Cr PC to suspend the conviction imposed in S.C.No. 457 of 2012 on the file of the VI Additional Sessions Judge, Chennai pending disposal of the above criminal appeal.

For Petitioner .. Mr.V.Purushothaman Reddy
in Crl MP No. 7600/2020
Mr.S.Jayakumar
in Crl MP No. 8867/2020

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor
in both cases

COMMON ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner in Crl MP No. 7600/20 has been filed by A1 and the petitioner in Crl MP No. 8867/20 has been filed by A3 against the judgment rendered in S.C.No. 457 of 2012 on the file of VI Additional Sessions Judge, Chennai. By judgment dated 03.07.2019, the

petitioners/A1 and A3 were convicted for the offence punishable under Sections 302 and 302 r/w 109 IPC and they were sentenced to undergo life imprisonment. Seeking suspension of sentence, the present petitions have been filed.

2.The case of the prosecution is that the deceased received money from P.W.16, who in turn, pledged the jewels belonging to the wife of A1. This was thereafter given to P.W.11 by the deceased. However, the money was not returned by the deceased though P.W.11 returned the same to him. The jewels were redeemed by the wife of A1 notwithstanding the non-payment of money. P.W.16, is none other than his brother-in-law of A1. Enraged over the non-payment, A1 along with A2 and A3 attacked with knife while A2 and A3 caught hold of him. The trial Court by placing reliance upon the evidence of P.Ws 1 to 17 coupled with the recovery rendered conviction.

3.Learned counsel appearing for the petitioners submitted that P.W.1 could not have been the eye witness. Even according to her, the deceased left early. She was not aware of the local language. The scribe who helped P.W.1 to write the complaint has not been examined. She has also stated to have told P.W.2 that some body has committed the offence. P.W.2 has also stated that he was informed over phone that the deceased was done away with by some persons. This was the statement also given by P.W.1 to him. He is the son of the deceased. P.W.6, who is the other eye witness could not have witnessed the occurrence. He was not the neighbour though he claims to be the one. He further stated that on the date of occurrence, the police was very much available. Therefore, there is serious doubt over the very compliant at the instance of P.W.1. As against A3, even as per the case of the prosecution, he only caught hold of the deceased. There is no motive between him and the deceased.

4.Learned Additional Public Prosecutor appearing for the respondent submitted that P.W.1 cannot be stated to be an interested witness merely because, she happened to be the wife of the deceased. She clearly deposed about the occurrence and also the independent witness in the form of P.W.6. This coupled with the recovery of P.W.5 would clearly show that the petitioners committed the offence.

5.From the above made submissions, we do find that substantial issues involved both on fact and law. The evidentiary value of P.Ws 1,2 and 6 are to be considered to come to a conclusion as to whether the prosecution has proved its case beyond reasonable doubt. The very case of the prosecution is that the deceased, after receiving money, did not repay after pledging jewels. The overt act as against A3 is that only he caught hold of the deceased. The petitioners have been under incarceration from 03.07.2019 onwards. Thus, considering the above, we are inclined to suspend the sentence.

6.Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the each of the petitioner executes 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 VI Additional Sessions Judge, Chennai 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 appeals.

-sd/-
23/12/2020

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 VI ADDITIONAL SESSIONS JUDGE,
CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
R8 VADAPALANI POLICE STATION,
CHENNAI.

+1 C.C. to M/S. V.PURUSHOTHAMAN REDDY Advocate on payment of necessary charges SR.No.8613

+2 C.C. to M/S. S.JAYAKUMAR Advocate on payment of necessary charges SR.No.8670

सत्यमेव जयते Order

in
CRL MP.Nos.7600 & 8867/2020

in
CRL.A.Nos.553 & 568/2019

Date :23/12/2020

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