

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRL.M.P. No. 17846 of 2019

in

CrI.A. No. 827 of 2019

1. Kabali @ Azhagarasan
 2. Brinda
- ...Petitioners

Vs.

The State by
Inspector of Police,
Pappireddipatti Police Station,
Dharmapuri District,
Cr.No. 330 of 2014.

...Respondent

Prayer: Prayer: Petition filed under Section 389(1) of Cr PC to suspend the sentence of imprisonment imposed in the judgement dated 31.10.2019 made in S.C.No. 31 of 2015 on the file of the Additional Sessions Judge, Dharmapuri and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner .. Mr.C.Vasudevan

For Respondent .. Mr.K. Prabhakar
Addl. Public Prosecutor

ORDER

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

The petitioners are A1 and A2 in S.C.No. 31 of 2015 on the file of Additional Sessions Judge, Dharmapuri. The trial Court by judgment dated 31.10.2019 convicted the petitioners for the offence punishable under Section 302 IPC and sentenced each one of them to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioners were in illicit relationship with each others which was opposed by the deceased, who is the husband of the 2nd petitioner. Enraged over the same, the petitioners attacked the deceased with a wooden log. The prosecution examined 27 witnesses and many of them turned hostile. The witnesses also speak about the motive along with last seen theory. The Trial Court made substantial reliance upon the recovery and the evidence of P.W.9. P.W.9 has stated that he saw the petitioners taking the body of the deceased after the occurrence.

3. Learned counsel appearing for the petitioners submitted that the Trial Court has wrongly placed reliance upon the evidence of P.W.9. P.W.9 was having a criminal case and he has also deposed that he was afraid and apprehensive of the threat likely to be exerted by the Police. He has further stated that even before the test identification parade, the photographs of the petitioners were shown to him. Hence, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that P.W.9 has given a statement which was recorded under Section 164 Cr.P.C. P.W.s 1 to 5 and P.W.13 speak about the motive. The recovery made has been found to be acceptable by the Trial Court.

5. As stated, we are dealing with a case of circumstantial evidence. This Court will have to consider the veracity of the statement made by P.W.9 along with the recovery stated to have been made. The petitioners are underincarceration for more than one year. Thus, considering the above, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioners 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 Judicial Magistrate, Pappireddipatti 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/-

10/12/2020

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.

सत्यमेव जयते

TO

1 THE JUDICIAL MAGISTRATE,
PAPPIREDDIPATTI

2 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
PAPPIREDDIPATTI POLICE STATION,
DHARMAPURI DISTRICT.

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5 THE ADDITIONAL SESSIONS JUDGE,
DHARMAPURI

6 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

+1 C.C. to M/S.C.VASUDEVAN Advocate on payment of necessary
charges Sr.8074

+1 C.C. to M/S.V.R.ANNAGANDHI Advocate on payment of necessary
charges Sr.8075

Order

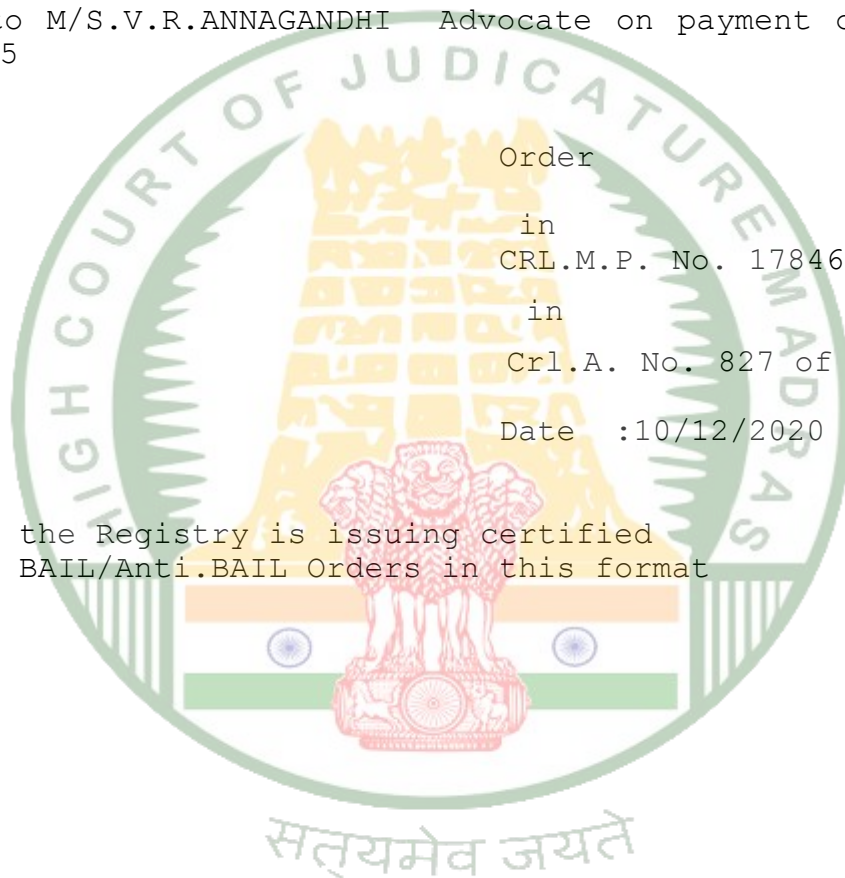
in
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Crl.A. No. 827 of 2019

Date :10/12/2020

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RVR 11/12/2020



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