

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No.19197 of 2019
in
Crl.A. No.917 of 2019

1.Ravi @ Ravichandran
2.Prema
3.Mariyappan
4.Tamilkumaran
5.Govindaraj

... Appellants/Accused

Vs.

State represented by
The Inspector of Police
Samalpatti Police Station
Crime No.7/2016.

... Respondent

PRAYER : Criminal Miscellaneous Petition filed under Section 389 (1) of Criminal Procedure Code praying to suspend the sentence imposed by the Additional District and Sessions Court, Krishnagiri, in S.C.No.194 of 2016 dated 03.12.2019 and enlarge the petitioners on bail pending disposal of the above appeal.

For Petitioners : Mr.N.Anantha Padmanaban
Senior Counsel for
M/s.APN Law Associates

For Respondent : Mrs. M.Prabhavathi,
(Additional Public Prosecutor)

ORDER

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conferencing".

2.The appeal has been preferred by the accused against the judgment dated 03.12.2019 by which the accused A1 to A5 were sentenced to life for the offence under Section 120B IPC and A1 to A4 were sentenced to life for the offence under Section 302 IPC for having murdered one Manikandan by strangulating him on 14.12.2015, as he was having extra marital relationship with A.2, daughter-in-law of A.3 and the body was taken in Tata Ace vehicle from Ethipatti village to Kotapallanur village and thrown into Ethalankuttai lake.

3.Mr.N.Anantha Padmanaban, learned Senior Counsel appearing for the petitioners would submit that accused were sentenced for no evidence and absolutely there is no motive to murder the deceased as no one spoke about the alleged illegal relationship of the deceased with A.2, in the evidence. Even in the F.I.R., the earliest document, nothing has been mentioned about the alleged illicit relationship. In the absence of any motive, the murder could not have been committed by the convicts.

4.The learned Senior Counsel would further submit that there are lot of contradictions in the evidence adduced by the prosecution. It is only based on confession, the materials have been recovered from the possession of A2 viz., the motorcycle key and the rope allegedly used for strangulating the deceased. He would further submit that all the witnesses spoke about the motorcycle used by the accused as Hero Honda, whereas the key namely, M.O.1, which was recovered from A2 is only a TVS two wheeler key. Therefore, the recovery also goes.

5.Further he would submit that all the witnesses spoke that there was alleged illegal relationship generally and that too they have come to know only from the Police or hear say evidence and there is no direct evidence to speak about the alleged illegal relationship of the deceased with A2. There was no evidence to point out that the A.2 called the deceased on 14.12.2015 at midnight and thereafter, strangulated him. The call details though was not produced before the Court, the mobile number of the deceased and A2 were not proved as no one spoke about that.

7. Next point is that though the hair which was found in the Tata Ace vehicle in which the body of the deceased was alleged to have been transported from Ethipatti village to Kottapallanur village was examined and biological report was marked as Ex.P21 and found that the hair was that of the deceased. However, Mr.N.Anantha Padmanaban, learned Senior Counsel very elaborately dealt this issue by taking the Court through P.W.16/Doctor's evidence who conducted post-mortem. The P.W.16/Doctor has categorically stated that he conducted post-mortem on 15.12.2015, whereas the recovery mahazar Ex.P8 would speak that the hair was recovered from Tata Ace vehicle only on 17.12.2015 and therefore, he very brilliantly pointed out that when Forensic expert who did the post-mortem on 15.12.2015 would not have taken a sample hair from the body of the deceased as at that point of time the hair of the deceased was not recovered from the vehicle. Therefore, Ex.P21 cannot be correct.

8.Pointing out the above said contradictions, the learned Senior Counsel would submit that in the absence of any direct witness and in the absence of proved motive, the sentence against the convicts have to be suspended as arguable points are involved in this case.

9. However, Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing on behalf of the respondent very categorically would assert that most of the witnesses spoke about the illegal relationship of the deceased with A2. In spite of advice, the deceased was compelling her for illegal relationship and that was the reason why, out of conspiracy, he was called and done away by strangulating. She would further point out that there will be seldom evidence for extra marital relationship and only circumstantial evidence could be adduced. The circumstantial evidence has been adduced by most of the witnesses, especially there is a direct witness P.W.11. Therefore, the case has been proved by circumstantial evidence. She further contended that even if there are infirmities and discrepancies in the evidence, that can be argued only at the time of final disposal. This is a case of cruel murder and therefore, no leniency should be shown to the convicts.

10. Heard the learned counsel appearing for the petitioners as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials on record.

11. The advocacy of Mr.N.Anantha Padmanabhan is appreciable. He has gone through the case very thoroughly which is not done by many lawyers nowadays and he took the Court to various evidence and pointed out that there is no direct evidence to prove that there was a motive for murdering the deceased. However, as rightly pointed by Mrs.M.Prabhavathi, learned Additional Public Prosecutor, there could not be any direct evidence for extra marital relationship except the parties. Extra marital relationship or adultery, even before the Family Court can be proved mostly by circumstantial evidence. In exceptional cases only after the advent of CCTV cameras, the cases are proved by direct evidences. Especially, with regard to illegal relationship in villages, it is not possible to get the direct evidence. However, as pointed out by the learned Additional Public Prosecutor, P.W.11 has categorically spoke about the illegal relationship of the deceased with A2. With regard to recovery, the learned Senior Counsel rightly pointed out that there is a contradiction with regard to recovery of key chain. Moreover, he would also point out the possibility of examining the hair of the deceased which was seized from the Tata Ace vehicle, subsequent to the post-mortem done on 15.12.2015 and therefore, there is no possibility of getting the sample hair of the deceased. All these things are very relevant points and argued thoroughly by the learned Senior Counsel. However, these are the matters which should be gone into only at the time of final disposal.

In the instance case, A2, who is a lady is the victim of circumstances. It is also alleged by the prosecution, she resisted illegal relationship after advice from the family members. In spite of the same, when the deceased forced her, A2 was compelled to conspire with other convicts to do away the deceased. Hence for the reasons stated above this Court is inclined to suspend the sentence imposed on A2.

8.As far as A1 is concerned, he is a third party and he is neither connected with the deceased nor with the accused. It is stated by the prosecution that A1's vehicle has been used for transporting the body of the deceased. Since A1 is the third party and not connected with the crime, though the prosecution would allege that he has also participated in the crime, this Court is of the opinion that the conviction against A1 is required to be suspended and accordingly, it is hereby suspended. Accordingly, the substantive sentence of imprisonment imposed by the learned Additional District and Sessions Judge, Krishnagiri, against the petitioners 1 and 2 alone are suspended on the following conditions:

(i) Both the petitioners (A1 and A2) are directed to execute their own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each before the Superintendent of Prison, Central Prison, Vellore, in view of the prevailing pandemic situation.

(ii) The Petitioners 1 and 2 must also appear before the Judicial Magistrate, Uthangarai, on the first working day of every month at about 10.30 a.m. , pending appeal, until further orders.

As far as other accused are concerned, this petition is dismissed.

-sd/-

06/08/2020

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 ADDITIONAL DISTRICT AND
SESSIONS JUDGE, KRISHNAGIRI.

2 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT OF MADRAS, CHENNAI.

4 THE INSPECTOR OF POLICE,
SAMALPATTI POLICE STATION.

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

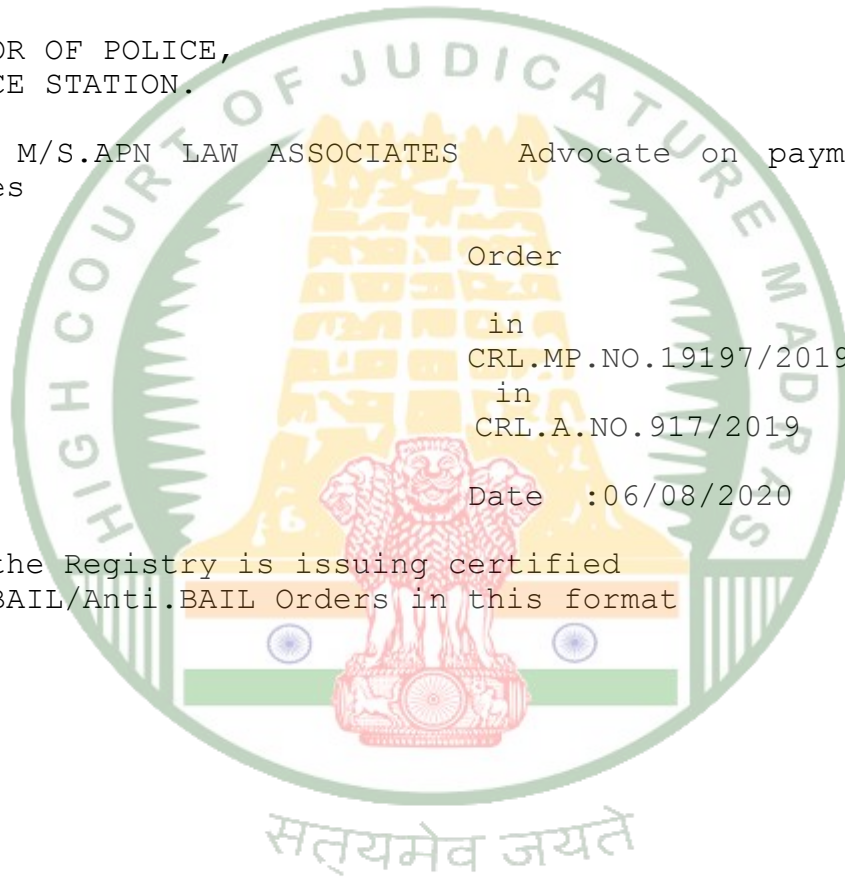
Order

in
CRL.MP.NO.19197/2019
in
CRL.A.NO.917/2019

Date :06/08/2020

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MK:20/08/2020



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