



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Ninth day of November Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

Crl.M.P.(MD) Nos.4243, 4244 and 4245 of 2020
in

Crl.A.(MD)No.620 of 2019

AYYAPPAN ... APPELLANT/ACCUSED NO.4
in CRL MP(MD) No.4243 of 2020

MUTHUKRISHNAN ... APPELLANT/ACCUSED NO.3
in CRL MP(MD) No.4244 of 2020

SURESH ... APPELLANT/ACCUSED NO.5
in CRL MP(MD) No.4245 of 2020

-VS-

STATE REP.BY
THE INSPECTOR OF POLICE
VALLIYOOR POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.161 OF 2008

... RESPONDENT/COMPLAINANT
IN ALL THE PETITIONS

Common Prayer in Crl.M.P.(MD) Nos.4243, 4244 and 4245 of 2020 in
Crl.A.(MD)No.620 of 2019:

Petition filed praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court may be pleased
to suspend the sentence imposed upon the petitioner/Accused No.3, in
S.C.No.239 of 2013 on the file of the IV Additional Sessions Judge,
Tirunelveli, dated 31.10.2019.

Prayer in Crl.A.(MD)No.620 of 2019:

To admit this appeal on file, to call for the records from the
Lower Court and to duly set aside the Judgment passed in S.C.No.239
of 2013 on the file of the IV Additional Sessions Judge,
Tirunelveli, dated 31.10.2019.

Order : These petitions are coming up for orders on this day, upon
perusing the petitions filed in support thereof and upon hearing the
arguments of MR.S.KRISHNAN, Advocate for the appellants in all the
petitions and of MR.R.ANANDARAJ, Additional Public Prosecutor on
behalf of the Respondent in all the petitions, the court made the
following order:-

<https://hcservices.ecourts.gov.in/hcservices/>



(Order of the Court was made by K.KALYANASUNDARAM, J)

The petitioners are A3, A4 and A5 in S.C.No.239 of 2013 on the file of the IV Additional Sessions Court, Tirunelveli and they were tried along with 5 other accused for the offences under Sections 147, 365, 302 and 201 IPC and they were found guilty and sentence including imprisonment of life was imposed.

2.The case of the prosecution is that on 23.04.2008 at about 09.30 p.m, all the accused have kidnapped the deceased Bagavathi in a Maruthi Omni Van bearing Reg.No. TN-72-AZ-0471 to have unnatural sex with them. Since the deceased refused the demand of the accused, he was done to death.

3.Mr.P.Krishnan, learned counsel for the petitioners would argue that the criminal case was registered based on the complaint given by P.W.1. According to the learned counsel, the earlier complaint given by P.W.1 dated 24.04.2018, has been suppressed and after the accused were secured on 25.04.2018, the earlier complaint was altered to falsely implicate the accused in this case. It is the submission of the learned counsel that in the course of cross examination, P.W.1 has also admitted this fact. It is further contended that no independent witness was examined to substantiate the case of the prosecution and furthermore, P.Ws.2, 5, 6, 8 and 16 have turned hostile and therefore, the extra judicial confession said to have been given by A1, A2 and A5 cannot be put against the petitioners herein. Since the accused were not on bail pending trial, these applications can be allowed.

4.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing on behalf of the respondent would argue that the criminal case came to be registered based on the complaint given by P.W.1. It is contended that though P.W.1 was not an eyewitness to the occurrence, but in the complaint itself, it has been specifically stated that all the accused have been kidnapped the deceased in the Omni Van on the basis of the information furnished by P.W.3. It is further submitted that the body of the deceased was exhumed on the basis of the extra judicial confession given by A1, A2 and A5 before P.W.12, who is the Village Administrative Officer and the grounds raised in the bail petition were considered by the another Bench in Crl.M.P(MD)No.99 of 2020 in C.A(MD)No.10 of 2020 and the said petition filed by A8 was dismissed.

5.In the matter on hand, it is true that the entire prosecution case is based on the circumstantial evidence. Admittedly, the body of the deceased was exhumed pursuant to the extra judicial confession given by A1, A2 and A5 before the Village Administrative Officer, P.W.12. As rightly pointed out by the learned Additional Public Prosecutor, the grounds raised in these petitions were considered by the another Bench, they were rejected and the bail



petition of A8 came to be dismissed on 05.02.2020. Therefore, we are not impressed to take a different view in this case.

6. In the result, these miscellaneous petitions are dismissed.

sd/-
09/11/2020

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI.
- 2 THE INSPECTOR OF POLICE,
VALLIYOOR POLICE STATION,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL.M.P. (MD) Nos.4243,
4244 AND 4245 of 2020
IN
CRL A(MD) No.620 of 2019
Date :09/11/2020

skn
JM/VR/SAR II/20.11.2020/3P/5C