

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Second day of June Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mr Justice R. PONGIAPPAN

CRIMINAL MISCELLANEOUS PETITION No.5463 of 2021

IN CRL.A.No.204 of 2021

K.ELANGO @ PACHAL ELANGO [PETITIONER / APPELLANT / A2]

Vs

THE STATE OF TAMILNADU REP.BY [RESPONDENT / RESPONDENT /
THE INSPECTOR OF POLICE, COMPLAINANT]
PUDUCHATRAM POLICE STATION,
NAMAKKAL DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.204/2021 on the file of the High Court, the High Court will be pleased to suspend the sentence of punishment in Judgment dated 31.10.2019 in S.C.No.99 of 2015 passed against the Appellant/A1 by the Hon'ble Principal Sessions Judge, Namakkal, Namakkal District convicting him for the alleged offence U/Sec.302 IPC and sentencing the Appellant/A1 [1] to undergo imprisonment for life and imposed fine of Rs.10,000/- in default of payment of fine to undergo simple imprisonment for four years; and [2] convicting for the alleged offence U/Sec 201 IPC and sentencing the Appellant/A1 to undergo rigorous imprisonment or three years and imposed fine of Rs.10,000/- in default of payment of fine to undergo simple imprisonment for nine months, concurrently pending disposal of the above Crl.A.No.204/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.204/2021 on the file of the High Court and upon hearing the arguments of M/S.S.ARUNKUMAR, Advocate for the Petitioner and of M/S. R.MUNIYAPPARAJ, Government Advocate (crl.side) on behalf of the Respondent the court made the following order:-

(Order of the Court was made by R.PONGIAPPAN,J.)

This criminal miscellaneous petition has been filed seeking to suspend the sentence of imprisonment imposed on the petitioner/Accused No.2, by judgment and order dated 31.10.2019 passed in S.C.No.99 of 2015, on the file of the learned Principal Sessions Judge, Namakkal, Namakkal District.

2. The case of the prosecution is that on 15.12.2014 at about 8.30PM, near to the ERI, the petitioner/Accused No.2 and other accused in this case, saw the deceased Venkatachalam, who was indulging in homo sex activities with another person. After seeing the same, the petitioner/Accused No.2, and other two accused decided to have sexual intercourse with the wife of the deceased Venkatachalam and threatened him to call his wife. Due to the threat made by the petitioner/Accused No.2 and others, the deceased Venkatachalam, telephonically called his wife and asked her to come over to the farm house.

3. Subsequent to that, the petitioner/Accused No.2 and other accused went along with the deceased in their two wheeler to Padayappa Garden plot situated on the backside of Vivekanda school, wherein at about 6.00AM on 16.12.2014, inside the Jayamurugan Spinning Mill situated on the Eastern side of National High ways road, the deceased Venkatachalam raised an alarm. Therefore, the petitioner/Accused No.2 and other accused decided to murder the deceased Venkatachalam and in the course of the same transaction, the petitioner/Accused No.2 and other accused [A3] caught hold of the deceased Venkatachalam tightly and Accused No.1, forcibly hit on the face of the deceased Venkatachalam by using the neem tree. Further, all the accused gagged his mouth and Accused No.1 tightened the neck of the deceased Venkatachalam with a lungi, as a result of which, the said Venkatachalam died and thereafter, in order to screen the evidence of murder and to escape from legal punishment, the petitioner/Accused No.2 and other accused had dragged the dead body near to Jayamurugan Spinning Mill and dropped the body of the deceased Venkatachalam into a cotton pit and covered the dead body with cotton and cleaned the blood stains, further, they took the cellphone and TVS XL vehicle, which belonged to the deceased. The said occurrence constituted the offence under Section 302 and 201 IPC.

4. After concluding the trial, the learned Principal Sessions Judge, Namakkal, Namakkal District, came to the conclusion that the petitioner/Accused No.2 is found guilty of the offence under Section 302 of IPC and thereby, convicted and sentenced to undergo imprisonment for Life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for four years. Further, the

petitioner/Accused No.2, was convicted for the offence under Section 201 of IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for nine months.

5. Mr.S.Arun Kumar, learned counsel appearing for the petitioner/Accused No.2, would contend that during the time of occurrence, the petitioner/Accused No.2 was residing in Coimbatore, further, he is falsely implicated in this case without any iota of evidence. According to him, registering the case against the petitioner/Accused No.2, is a pure atrocity committed by the police officials. He would further contend that since the occurrence had happened near to the college, it is necessary to examine the students who are studying in the said college. Further, the prosecution has not examined the eye witnesses and therefore, convicting the petitioner/Accused No.2 for the offence under Section 201 r/w 302 IPC, is bad in law.

6. Per contra, Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) would contend that since the alleged occurrence had happened in the night hours, it is improbable to have witnessed by the public. Further, with an intention to commit the rape, the petitioner/Accused No.2 and other accused threatened the deceased, which is nothing by heinous crime. Further, the attitude committed by the petitioner/Accused No.2 and others is not at all tolerable and therefore, if the sentence awarded to the petitioner/Accused is suspended there may be a chance for absconding. Accordingly, he prayed for dismissal of this petition.

7. Now, on considering the rival submissions made by the learned counsel on either side, it is true, during the time of trial, in order to prove the offence, no eye witnesses have been examined on the side of the prosecution. However, the evidence given by PW4, is very clear that before the occurrence, he saw the deceased alongwith the accused. Accordingly, the prima facie evidence is available to prove the last seen theory. Further, it is the case of the prosecution that after the alleged occurrence, the other accused in this case viz., Elango [A1], voluntarily surrendered before the Village Administrative Officer and gave an extra judicial confession statement and the same was substantiated through the material objects, which were recovered by the investigation officer.

8. In the said circumstances, for proving the offence under sections 302 and 201 IPC, expecting an eyewitness is unnecessary. More than that, the attitude committed by the petitioner/Accused No.2 and the other accused during the time of occurrence is intolerable.

9. In a similar situation, in Vijayakumar Vs. Narendra and others, reported in 2002 (9) SCC 364, our Hon'ble Apex Court has held that in considering the prayer for bail in a case involving serious offences like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of offence, and the desirability of releasing the accused on bail after they have been convicted for committing serious offence of murder.

10. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. Further, the mere fact that during the period when the accused person were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail.

11. Therefore, applying the principles set out in the above referred judgment, we are of the opinion that though the petitioner/Accused No.2 has been under incarceration from 31.10.2019 onwards, considering the gravity of the offence committed by the petitioner/Accused No.2, we are of the opinion that this is not a fit case to suspend the sentence of imprisonment and grant bail to the petitioner/Accused No.2.

12. In the result, this criminal miscellaneous petition is dismissed. The Registry is directed to call for the records, prepare the typed set of papers immediately and list the main appeal for final hearing in the month of August 2021.

-sd/-
22/06/2021

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 PRINCIPAL SESSIONS JUDGE,
NAMAKKAL, NAMAKKAL DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
PUDUCHATRAM POLICE STATION,
NAMAKKAL DISTRICT.

5 THE SECTION OFFICER
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.S.ARUNKUMAR Advocate on payment of necessary charges

Order

in
CRL MP.5463/2021

in
CRL.A.204/2021

Date :22/06/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
cs 29/06/2021

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