



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

Monday, the Seventh day of June Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) Nos.1181 & 2528 of 2021, 2004 & 3926 of 2020
in
CRL A(MD)Nos.150, 58 and 10 of 2020

GANESAN @ KATTA GANESAN	... PETITIONER/ACCUSED No.6 IN CRL MP(MD)No.1181 of 2021 in CRL A(MD)No.150 of 2020
MUTHUPANDI @ ARUNACHALA MUTHUPANDI	... PETITIONER/ACCUSED No.1 IN CRL MP(MD)No.2528 of 2021 in CRL A(MD)No.150 of 2020
SIVA	... PETITIONER/APPELLANT IN CRL MP(MD)No.2004 of 2020 in CRL A(MD)No.58 of 2020
SULTHAN	... PETITIONER/APPELLANT/ACCUSED No.8 IN CRL MP(MD)No.3926 of 2020 in CRL A(MD)No.10 of 2020

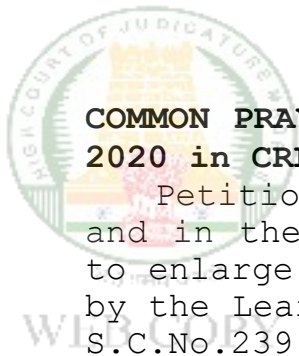
Vs

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

... RESPONDENT/COMPLAINANT
IN CRL MP(MD)Nos.1181 & 2528 OF 2021
IN CRL A(MD)No.150 of 2020

... RESPONDENT/RESPONDENT
IN CRL MP(MD)No.2004 of 2020 in
CRL A(MD)No.58 of 2020

.... RESPONDENT/RESPONDENT/COMPLAINANT
IN CRL MP(MD)No.3926 of 2020 in
CRL A(MD)No.10 of 2020



COMMON PRAYER IN CRL MP(MD) Nos.1181 & 2528 of 2021, 2004 & 3926 of 2020 in CRL A(MD)Nos.150, 58 and 10 of 2020:

Petitions filed praying that in the circumstances stated therein and in the petitions filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed by the Learned IV Additional Sessions Judge, Tirunelveli District in S.C.No.239 of 2013 vide its judgment dated 31/10/2019 pending the disposal of the above main Criminal Appeals.

Common Prayer in CRL A(MD)Nos.150, 58 and 10 of 2020:

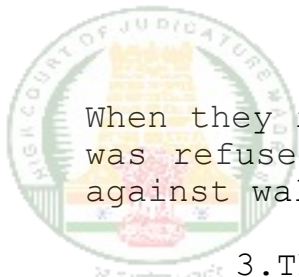
To call for the entire records pertaining to the judgment rendered by the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District in S.C.No.239 of 2013 judgment dated 31.10.2019 and set aside the same and consequently acquit the appellants honourably.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.R.ANAND, Advocate for the petitioner in IN CRL MP (MD)Nos.1181 & 2528 OF 2021 IN CRL A(MD)No.150 of 2020 and Mr.K.RAJESWARAN, Advocate for the Petitioner IN CRL MP(MD)No.2004 of 2020 in CRL A(MD)No.58 of 2020 and Mr.A.KESAVAN, Advocate for the Petitioner in CRL MP(MD)No.3926 of 2020 in CRL A(MD)No.10 of 2020 and of Mr.S.RAVI, Standing Counsel for Government on behalf of the Respondent in all the petitions, the Court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The petitioners, who have been arrayed as A1, A6, A7 and A8, in S.C.No.239 of 2013, on the file of IV Additional District and Sessions Court, Tirunelveli, were tried along with other accused for the offences under Sections 147, 365, 302 and 201 IPC and all the 8 accused were convicted for the charges of 365, 302 and 201 IPC and they were sentenced to under to life imprisonment for the offence of murder; 3 years R.I for the charge under Section 365 IPC; 3 years R.I for the charges of 201 IPC. They were also imposed with fine, which carries default sentence. Challenging the conviction and sentence, they have preferred these appeals. Pending appeals, they seek suspension of sentence.

2.The case of the prosecution is that the deceased Bagavathi and the 8th accused Sulthan were having unnatural sex. The 8th accused is said to have informed his unnatural sex relationship with the deceased to the other accused, viz., A1 to A7. All the 8 accused were auto drivers in Valliyoor and they used to park their vehicle at Valliyoor New Bus Stand. The further case of the prosecution is that on 23.04.2008 at 09.30 p.m, the deceased Bagavathi, who was working as a Cook, had returned home after attending his work and when he was near Valliyoor new bus stand, the accused 1 to 8 have conspired and kidnapped the deceased Bagavathi.



When they insisted to have unnatural sex with the deceased, the same was refused by him and hence, they pushed the head of the deceased against wall and after he fell down, smashed his head using a stone.

3.The prosecution examined as many as 18 witnesses and marked Ex.P.1 to P.29 and M.O.Nos.1 to 22 to prove the charges. P.W.1 is the sister of the deceased. On 24.04.2008 at 02.00 p.m, P.W.1 lodged a complaint (Ex.P1) against all the accused for kidnapping the deceased Bagavathi and the same was registered under Sections 147 and 365 IPC. It is alleged that on 25.04.2008, A1, A2 and A7 have given extra judicial confession (Ex.P.10) to P.W.12, Village Administrative Officer. P.W.15-Village Headman was also present at that time. In the extra judicial confession, they have confessed that they along with other accused murdered the deceased. Thereafter, the offence was altered into Section 302 IPC. The Trial Judge, on appreciation of evidence, held that the charges against the accused have been proved, convicted and sentenced as stated supra.

4.The learned counsels appearing for the petitioners Mr.A.Kesavan, Mr.R.Anand and Mr.K.Rajeshwaran would submit that admittedly, there is no eye-witness to the incident and the prosecution mainly placed reliance on the extra judicial confession (Ex.P.10). It is the submission of the learned counsel that there are material contradictions with regard to obtaining statement (Ex.P.10) and hence, the accused are entitled for the benefit of doubt. It is contended that there is an unexplained and inordinate delay in lodging the complaint and the statement of independent eyewitness recorded by the Investigation Officer (P.W.17) was admittedly not sent to the Court which create serious suspicion over the case of the prosecution. It is also contended that the skull was recovered under Ex.P.11 Mahazer and it is not prepared in the scene of occurrence, but the exhibit was typed in the police station and the skull was also not in the scene of occurrence for experts opinion.

5.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State has vehemently opposed the bail petitions contending that though the incident was witnessed by PW.5 and PW.6, they have turned hostile in view of the threatening by the accused. According to the learned standing counsel, the names of the accused have been clearly mentioned in the First Information Report, which was marked as Ex.P.1 and the body of the deceased was recovered at the instance of the accused. Admittedly, the incident had taken place in the year 2008, but P.Ws.12 and 15 were examined in the year 2016, hence, there are minor discrepancies in the evidence, which would not affect the case of the prosecution. Considering these aspects, the bail petitions of the other accused, A3, A4 and A5 came to be dismissed. It is next contended that two of the petitioners herein namely, A1 and A7 have involved in criminal cases and prayed for



6. Heard the rival submissions and perused the materials available on records.

7. In the matter on hand, the learned counsels for the petitioners have drawn the attention of this Court to the evidence of P.Ws.12 and 15. P.W.12 is the Village Administrative Officer of Valliyoor Panchayat II Village. P.W.15 is the Village Assistant of the Village. P.W.12 in the cross-examination has admitted that there is no computer or typing machine in his office, hence, the extra judicial confession of A1 was written by him and the same was handed over to the police, where it was typed in the computer. P.W.15 has categorically stated in his evidence that P.W.12 had availed the service of a person from Sai Computer and extra judicial confession of the first accused was typed in the computer in the office of P.W.12. These material contradictions in the evidence of P.Ws.12 and 15, as pointed out by the learned counsels for the petitioners were not considered in the earlier applications filed at the instance of A3, A4, A5 and A8. It is further seen that the accused are said to have kidnapped the deceased at 09.30 p.m on 23.04.2008, but the complaint (Ex.P.1) was lodged only at 02.00 p.m on 24.04.2008 and Ex.P.1 reached the Court on 25.04.2008. The delay in lodging the complaint and sending the same to the Court has not been properly explained by the prosecution. That apart, we find some arguable points in the appeals, but there is no likelihood of taking up the cases for final disposal in near future.

8. Considering the above aspects, we are of the opinion that the petitioners are entitled for suspension of sentence during pendency of these appeals. Accordingly, these criminal miscellaneous petitions are allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on each of them executing 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 the Judicial Magistrate, Valliyoor, Tirunelveli.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioners shall appear before the learned Judicial Magistrate, Valliyoor, Tirunelveli at 10.30 a.m., on every Monday until further orders.

iv. On any particular date, if the petitioners are not able to appear, leave is



granted to the petitioners to file an application under Section 317 Cr.P.C. and appear before the committal Court on any other day, as determined by the committal court, in lieu of the day on which they would absent.

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

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

- 1.THE IV ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI DISTRICT.
 - 2.THE JUDICIAL MAGISTRATE,
VALLIYOOR, TIRUNELVELI DISTRICT.
 - 3.-DO-THRO'THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
 - 4.THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI.
 - 5.THE INSPECTOR OF POLICE,
VALLIYOOR POLICE STATION, TIRUNELVELI DISTRICT.
 - 6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.K.RAJESHWARAN, Advocate SR.No.18975 [F]

ORDER
IN
CRL MP(MD) Nos.1181 & 2528 of 2021,
2004 & 3926 of 2020 in
CRL A(MD)Nos.150, 58 and 10 of 2020
Date :07/06/2021

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