



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

Friday, the Eighth day of January 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) No.7236 of 2020

IN

CRL A(MD) No.106 of 2020

1 FEROZ AHAMED
2 FRANCIS PRABU

... PETITIONERS 1 & 2/
APPELLANT 1 & 3/ACCUSED 2 & 4

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
CBCID POLICE STATION,
TRICHY DISTRICT.
CRIME NO.280 OF 2009.

... RESPONDENT/
RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence and conviction made in the Judgment in S.C.No.164 of 2011 on the file of the III Additional District and Sessions Judge, Tiruchirappalli dated 22.1.2020 pending disposal of the instant Criminal Appeal.

Prayer in CRL A(MD) No.106 of 2020:

To call for the Judgment dated 22.1.2020 made in S.C.No.164 of 2011 on the file of the III Additional District and Sessions Judge, Tiruchirappalli and set aside the same.

ORDER : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.N.ANANDAKUMAR, Advocate for the petitioners and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the

<https://hcservices.mca.gov.in/hcservices> Respondent, the court made the following order:-



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

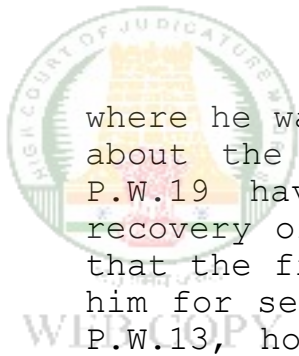
Assailing the conviction and sentence passed in S.C.No.164/2011 by the III Additional District and Sessions Judge, Tiruchirappalli vide Judgment dated 22.01.2020, the present appeal has been filed by A2 to A4. Pending appeal, A2 & A4 seek suspension of sentence.

2.It is the case of the prosecution that the first accused Umar Farook is the brother in law of the deceased and they had money transactions. Due to dispute over repayment of the money borrowed by A1 from his brother in law, the deceased Sahul Hameed, A1 brought the deceased to his house on 01.03.2009 and with the help of his friends, A2 to A4 caused death of Sahul Hameed and thereafter, the body was buried in a burial ground after pouring acid.

3.Mr.N.Anandakumar, learned counsel for the petitioners would argue that the entire prosecution case is based on the circumstantial evidence. The prosecution failed to prove motive and recovery. It is also stated that P.W.5, who was examined to prove last seen theory, has turned hostile and hence, this is the case of no evidence. Adding further, the learned counsel would state that the evidence of P.W.1 and the evidence of Investigation Officer, who was examined as P.W.19, would show that the motive alleged by the prosecution is a subsequent story to falsely implicate the accused in this case. It is further contended that as per the prosecution, A1 surrendered before the Village Administrative Officer and gave extra judicial confession and on the basis of that, the dead body of the deceased had exhumed from the graveyard and the mobile phone was also recovered from the shop of P.W.8. According to the learned counsel, the evidence of P.W.16, the Doctor, who conducted the postmortem and the chemical analysis report, which is marked as Ex.P.8, would show that no acid was used as alleged by the prosecution.

4. It is next submitted that P.W.1 has categorically admitted that the mobile phone belonging to the deceased was recovered from the bike and hence, the story of the prosecution that A1 gave the mobile phone of the deceased to P.W.8, is false. He further submitted that this Court has suspended the sentence for A3 in Crl.M.P(MD)No.3860 of 2020 vide orders, dated 18.11.2020.

5. Per contra, Mr.R.Anandaraj, learned Additional Public Prosecutor would vehemently oppose the bail petition contending that this is the case of brutal murder. According to him, after committing murder, the accused poured acid on the dead body of the deceased and thereafter, disposed of the dead body in the burial ground. Though originally the case was investigated by the jurisdictional police, subsequently, the investigation was transferred to the CBCID and they have traced out call details and found that the deceased was taken to the house of the first accused



where he was murdered. It is submitted that P.Ws.1 to 3 have spoken about the motive between the first accused and the deceased and P.W.19 have categorically stated about the arrest, confession, recovery of the body and the other material objects. P.W.8 deposed that the first accused handed over the cell phone of the deceased to him for service. The prosecution proved that A2 purchased acid from P.W.13, however, the accused have not explained the incriminating circumstances, while they were questioned under Section 313 Cr.P.C, but merely denied their involvement in this case.

6. We carefully considered the rival submissions and perused the available records.

7.It is also seen from the records that originally final report was filed against four accused, however, pending trial the first accused died and hence, the charges against him were abated. The accused 2 to 4 were tried for the charges punishable under Sections 302 r/w 34, 201 r/w 34 IPC. Admittedly, there is no eyewitness to the incident and the prosecution has relied on three circumstances to prove the charges against the accused namely, motive, last seen theory and recovery. The testimony of P.W.1 and P.W.18 would show that originally the witnesses have not stated anything about the money transactions between the first accused and the deceased and only during the evidence, they deposed that the first accused borrowed Rs.2,00,000/- from the deceased on 09.02.2009 and the dispute exists between them for non-payment of the loan. Though P.W.9 speaks about the arrest, confession and recovery from the accused, however, in the chief examination itself, P.W.1 has stated that the mobile phone of the deceased was found in his motorbike and it was recovered by the police. Therefore, we are not able to accept the evidence of P.W.8. The testimony of the Doctor, who conducted postmortem, and Ex.P.8 Chemical Analysis Report reveal that no acid was used as alleged by the prosecution.

8. In the light of the above facts and also considering the fact that this Court has already suspended the sentence for A3 in Crl.M.P(MD)No.3860 of 2020 by order dated 18.11.2020, we are of the opinion that the petitioners/A2 & A4 are entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition is 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 executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the Judicial Magistrate No.6, Trichy.

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



iii. The petitioners shall appear before the learned Judicial Magistrate No.6, Trichy, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which he would absent.

sd/-
08/01/2021

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/ /2021

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 III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUCHIRAPPALLI.
- 2 THE JUDICIAL MAGISTRATE NO.VI, TRICHY.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
- 4 THE INSPECTOR OF POLICE,
CBCID POLICE STATION, TRICHY DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.7236 of 2020
IN
CRL A(MD) No.106 of 2020
Date :08/01/2021

am
JM/PN/SAR III/21.01.2021/4P/7C