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Crl.MP.No.17273 of 2023
in Crl.A.No.264 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.17273 of 2023
in Crl.A.No.264 of 2023

1. John Bosco
2. Marry Glory Victoria ... Petitioners/A1 & A2

Vs.

State Rep. by
The Inspector of Police,
Mettur Police Station,
Salem District. ... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned Additional District Judge, Additional District Fast Track Court, Mettur, dated 06.01.2023 in S.C.No.117 of 2011 and enlarge the petitioners on bail pending disposal of the above appeal.

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For Petitioners : Mr.S.Doraiswamy
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners/A1 & A2, by the learned Additional District Judge, Additional District Fast Track Court, Mettur, in S.C.No.117 of 2011, by the judgment dated 06.01.2023, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned Additional District Judge, Additional District Fast Track Court, Mettur, in S.C.No.117 of 2011, convicted the accused and sentenced them as follows:

Accused No.	Offence	Sentence Imposed
A1	120(B) IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 year RI
	364 r/w 34 IPC	To undergo 10 years RI and to pay a fine of Rs.5,000/-, in default to undergo 1 year RI
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 year RI



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A2	120(B) IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 year RI
	364 IPC	To undergo 10 years RI and to pay a fine of Rs.5,000/-, in default to undergo 1 year RI
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 year RI
The sentences imposed were directed to run concurrently.		

3.Challenging the above conviction and sentence, the petitioners/A1&A2, have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.S.Doraiswamy, learned Counsel appearing for the petitioners and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. It is the case of the prosecution that the 1st petitioner/A1 is the son in law of the 2nd petitioner/A2. One Charles Raja, who was the son of the 2nd petitioner/A2 was murdered by the relatives of the deceased, who was the 1st wife of Charles Raja; that hence, the 2nd wife of Charles Raja viz., A3 and the



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petitioners decided to do away with the deceased; that on the fateful day, at about 10.30pm, A2 and A3 accompanied the deceased to Bangalore in a bus; that on the way from the place of residence to Bangalore, A2 and A3 got down from the the bus along with the deceased in the middle and A1 joined them in a motorcycle; that at 11.00pm, the accused tied the deceased and then caused severe injuries by pushing her against the tree and strangled till her death. After the registration of the complaint for the offence under Sections 354, 342, 323 and 302 of IPC. A3 was absconding and the case was split up and the trial Court ultimately convicted the A1 and A2/petitioners herein.

6. (i) The learned counsel for the petitioners submitted that the case is based on circumstantial evidence; that except for the alleged motive spoken to by PW2, no other circumstance has been established by the prosecution; that the witnesses examined to prove other circumstances viz., PW8, PW9, PW10, PW11 and PW12, turned hostile; that the trial Judge has erroneously relied upon the confession of A1.

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(ii) The learned counsel pointed to the evidence of PW9, who had stated that the deceased went alone to Bangalore, after attending the 30th day ceremony of her husband Charles Raja, which belies the prosecution case. He further submitted that the accused are in custody since 06.01.2023 and prayed to suspend the sentence imposed on the petitioners/A1 and A2.

7. The learned Additional Public Prosecutor per contra submitted that the prosecution has established the case beyond reasonable doubt; that there is no infirmity in the finding of the trial Court and hence, prayed for dismissal of the petition.

8. We have carefully considered the submissions of the learned counsel for the petitioners and the learned Additional Public Prosecutor and perused all the materials available on record.

9. It is seen that the conviction is based on circumstantial evidence.



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The witnesses/relatives of the deceased who were examined to prove that the deceased went along with A2 and A3, are either unreliable or have turned hostile. It is seen that the trial Court has relied upon the confession of A1 unfortunately, PW9's evidence is contrary to the prosecution case and supports the defence case. We find that the circumstances have not been conclusively established by the prosecution and in any case do not form a complete chain. The petitioners have a fair chance of success in the appeal.

10. Therefore, considering the above facts; the period of incarceration; the fact that the petitioners have a fair chance of success in the appeal and that the appeal is not likely to be taken up for hearing in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioners herein.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioners/A1 & A2, is



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- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional District Judge, Additional District Fast Track Court, Mettur;
- (ii) The petitioners and 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 and mobile numbers to ensure their identity;
- (iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

(S.S.S.R., J.) (S.M., J.)
20.11.2023

Internet : Yes

Index : Yes / No

Note to office:

Issue order copy by 22.11.2023

Upload the order copy forthwith

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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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To

- 1.The Additional District Judge,
Additional District Fast Track Court,
Mettur.
- 2.The Inspector of Police,
Mettur Police Station,
Salem District.
- 3.The Superintendent,
Central Prison, Salem
- 4.The Superintendent,
Women Prison, Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.

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