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Crl.M.P.No.5558 of 2024
in Crl.A.No.341 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2025

CORAM:

**THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

Crl.M.P.No.5558 of 2024 in
Crl.A.No.341 of 2024

1.Kaliyamoorthy
2.Kolanji

...Petitioners/appellants

Vs

The State by
The Inspector of Police,
T-6 Avadi Police Station,
Tiruvallur District.
Crime No.1184 of 2013

...Respondent/Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence passed on 15.02.2024 in S.C.No.152 of 2016 by the III Additional District and Sessions Judge, Tiruvallur at Poonamallee and enlarge the petitioners on bail pending disposal of the appeal.

For Petitioners : Mr.Iyapparaj
for Mr.P.Arumugarajan

For Respondent : Mr.S.Rajakumar,
Additional Public Prosecutor



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Crl.M.P.No.5558 of 2024
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ORDER

(made by *N.SENTHILKUMAR, J.*)

This Criminal Miscellaneous Petition has been filed seeking suspension of sentence imposed on the petitioners by the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee on 15.02.2024 in S.C.No.152 of 2016 and enlarge them on bail.

2. The learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee in S.C.No.152 of 2016, has convicted the petitioners and sentenced them as follows:-

<i>Name of the Accused/Petitioner</i>	<i>Offence</i>	<i>Sentence</i>
Kaliyamoorthy & Kolanji (A1 & A2)	Section 148 IPC	One year rigorous imprisonment and a fine of Rs.500/-, in default to undergo 3 months simple imprisonment
	Section 302 r/w 34 IPC	Life imprisonment and a fine of Rs.1,000/-, in default to undergo 6 months simple imprisonment

The sentences are ordered to run concurrently.

3. The case of the prosecution is that PW1 had preferred a complaint



Crl.M.P.No.5558 of 2024
in Crl.A.No.341 of 2024

WEB COPY

(Ext.P1), which was taken on file and registered under Crime No.1184 of 2013

on the file of T-6 Avadi Police Station for an offence under Section 302 IPC.

The complainant had stated that on 25.06.2013, her husband namely the deceased, who was running a conveyor mechanic shop and apart from that he used to do financing. The deceased had organised in getting auto finance in which A1 had cheated the deceased. Due to this reason, the first accused and the deceased had prior enmity. On 25.06.2013, the deceased as usual left his house in the morning around 9.00 a.m and normally he used to return for lunch in the afternoon around 3.00 p.m. PW1 had received a call from one Velavan, who was examined as PW2, stating that the deceased was found dead near a lake situated at Veeriyambakkam adjoining to Railway subway with cut injuries. PW2 had further informed PW1 that A7 had informed the deceased that A1 will come and meet the deceased around 11.00 a.m. However she was informed that her husband was done to death by Kaliyamoorthy (A1) and Damu @ Damodharan (A7). Based on the said complaint, the law was set in motion and police arrested A1 to A7.

4. The learned counsel appearing for the petitioners/appellants would contend that it is a case of circumstantial evidence that PW1 in the chief-examination had contended the contents of the complaint. However, the learned

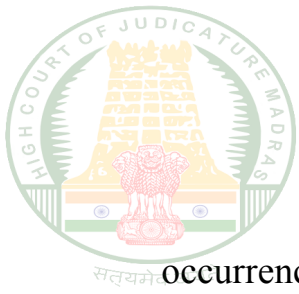


Crl.M.P.No.5558 of 2024
in Crl.A.No.341 of 2024

WEB COPY

counsel drew the attention that at the time of preferring the complaint by PW1, the death information was informed by PW2, who had stated that the deceased was done to death. But in the evidence of PW2, who had originally informed PW1 about the death of the deceased and in the cross-examination, PW2 had stated that he visited the scene of occurrence at about 1.30 p.m and he saw the presence of police. Though the prosecution claimed that the deceased was seen by PW7 and PW8, who had last seen alive of the accused and the deceased, during trial, PW7 had turned hostile. The only available evidence is PW8, who had seen all the accused inflicting injuries on the deceased. In the cross-examination, he had admitted that he has not seen the accused prior to the occurrence and even after the arrest, PW8 has not seen the accused thereafter. The learned counsel pointed out that in the absence of test identification parade, it is highly improbable that PW8, who is a stranger, had identified the accused persons first time in the trial court and relying on such evidence of identifying the accused person, may not be appropriate.

5. In the case of circumstantial evidence, the last seen alive theory is the fulcrum of the case and when the complainant herself has stated that the death information was given by PW2, whereas when PW2 had visited the scene of



Crl.M.P.No.5558 of 2024
in Crl.A.No.341 of 2024

WEB COPY

occurrence at 1.30 p.m, the presence of police was noticed and admitted by PW2, conjoiningly the complaint given by PW1 was treated as Ext.P1, PW1 had identified the accused persons in corroboration of the evidence of PW8, who had deposed that the inflicting injuries had taken place within a minute and therefore, he was unable to identify, which accused has inflicted the injury on the deceased and he could not identify the accused persons at the time of occurrence.

6. Taking into consideration of the discrepancies in Ext.P1 and the evidence of PWs.1, 2 and 8, who has not seen the accused, *prima facie*, we are satisfied that the appellants have a fair chance of success in the final disposal of the appeal, we are inclined to suspend the sentence passed on the petitioners/A1 and A2 by the trial court.

7. Accordingly, the criminal miscellaneous petition is **allowed** and the sentence imposed on petitioners 1 and 2/accused 1 and 2 is suspended on the following conditions:-

(i) The Petitioners shall execute separate bonds for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned III



Crl.M.P.No.5558 of 2024
in Crl.A.No.341 of 2024

WEB COPY

*Additional District and Sessions Court, Tiruvallur at
Poonamallee;*

(ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds 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; and

(iv) This order of suspension shall be subject to payment of fine imposed on the petitioners by the Trial Court in the judgment.

**(M.S.R, J.) (N.S, J.)
02.04.2025**

Asr

To

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Crl.M.P.No.5558 of 2024
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1. The III Additional District and Sessions Court,
Tiruvallur at Poonamallee

2. The Inspector of Police,
T-6 Avadi Police Station,
Tiruvallur District.
Crime No.1184 of 2013

3. The Superintendent,
Central Prison, Puzhal.

5. The Public Prosecutor,
High Court, Madras.



WEB COPY



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