

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Thirteenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice N. SESHASAYEE

CRIMINAL MISCELLANEOUS PETITION No.11039 of 2017

IN CRL A.553/2017

PARAMESWARI,

[APPELLANT/ACCUSED]

Vs

STATE THROUGH

[RESPONDENT]

THE INSPECTOR OF POLICE,

THEEVETTIPATTI POLICE STATION,

SALEM DISTRICT.

(IN CRIME NO.322 OF 2008).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.553 OF 2017 on the file of the High Court, the High Court will be pleased to Suspend the sentence and fine amount and release the petitioner on bail pending disposal of this criminal appeal before this Hon'ble Court against the judgment in S.C.NO.1242 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court No.I) Salem dated 30.11.2009 against the appellant /accused.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.553 of 2017 on the file of the High Court and upon hearing the arguments of M/S.P.PALANIKUMAR, Advocate for the petitioner and of Mr.R.RAVICHANDRAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner/Appellant is arrayed as Accused No.2 out of two accused in SC.No.124/2009 on the file of the Court of the Court of Additional District and Sessions Judge (Fast Track Court No.1), Salem and she was charged, tried for the commission of offence under section 302 read with 109 IPC and sentenced to undergo Rigorous imprisonment for life and to pay a fine of Rs.20,000/- and in default, to undergo one year rigorous imprisonment.

2 The first accused was convicted for the commission of the offence u/s.302 IPC and imposed him a sentence of rigorous

imprisonment for life and to pay a fine of Rs.20,000/- and in default, to undergo one year rigorous imprisonment. The Trial Court has granted set off under Section 428 of Cr.P.C and challenging the legality of the sentence, the present appeal is preferred by A2. Pending appeal, she has filed the above miscellaneous petition seeking suspension of her sentence.

3 It is brought to the knowledge of this Court that A2 is poor and therefore, she has not paid the fine and though the conviction and sentence was passed as early as on 30.11.2009, the appeal was filed with a delay and it was entertained on 04.09.2017.

4 The learned counsel appearing for the petitioner would submit that the case of the prosecution rest upon the circumstantial evidence and the motive projected by the prosecution for the commission of the offence is that A1 was in illicit intimacy with petitioner/appellant [A2] and on 06.07.2008 at about 18 hours, A1 and A2 were having physical relationship and it was seen by the deceased/son of A2, viz., Premnath who was aged about six years and A2 had shut his mouth while A1 slapped him and when the deceased child had fallen down, A1 took a stone and attacked him twice and as a consequence, he died out of shock and hemorrhage. It is submitted by the learned counsel for the petitioner that admittedly, no witnesses have been examined to speak about the company of A2 with A1 and the only evidence putforth by the prosecution is the evidence of PW5-Venkatachalam, who had deposed that at about 5.00 p.m., on the date of occurrence, he saw A2/Parameshwari coming from North to South and about half-an-hour later, he heard the alarm of PW1 who was running with the child on his hands and P.W.5 was examined three days thereafter and it is also submission of the learned counsel appearing for the petitioner/appellant, that the extra judicial confession given by the petitioner / appellant [A2] before P.W.4 - Village Administrative Officer, as well as the confession recorded by P.W.15 -Judicial Magistrate No.2, Mettur, under Section 164 of Cr.P.C. do not corroborate with each other to sustain the case of the prosecution and would further add that the prosecution has failed to link the circumstances with the appellant / accused to commit the offence of murder and would further add that the petitioner / appellant is having a bright chance of success in the appeal and hence prays for suspension of sentence.

5 Per contra, Mr.R.Ravichandran, learned Government Advocate (Criminal side) would submit that the extra judicial confession given by petitioner/Accused No.2 before PW5 - Village Administrative Officer amply corroborates with the judicial confession given by her before PW.15-Judicial Magistrate No.2, Mettur, coupled with the recovery of saree (M.O.6) and further add that the Trial Court based on proper appreciation of oral and documentary evidence, has rightly convicted and sentenced the petitioner/appellant and prays for dismissal of this petition.

6 This Court has carefully considered the rival submission and also perused the materials placed before it including the impugned judgment.

7 This Court has also considered the oral testimonies of the witnesses enclosed with the typed set of documents and the impugned judgment and also the rival submissions.

8 This Court, upon perusal of the oral and documentary evidences, prima facie finds that with regard to A2 seen in the company of A1, absolutely no evidence is available and PW5 has only seen PW1 carrying child on his shoulder and though the extra judicial confession was given by A2 before PW4, it is not amply corroborated through the judicial confession given before PW15 for the reason that when PW15 had cross examined the petitioner / appellant, he has recorded the submission of the appellant / Accused No.2 that she was subjected to third degree method, in order to give such a statement.

9 It is also settled position of law that mere recovery of incriminating objects would not lead to the conclusion that the appellant / accused has committed the offence. Thus, this Court is prima facie of the view that the chain of circumstances projected by the prosecution to connect the petitioner / appellant for the commission of offence is not complete and further she is entitled for suspension of sentence of imprisonment and fine.

10 In the light of the above facts and circumstances that the substantial sentence of imprisonment upon Accused No.2 as well as the sentence of fine, are suspended pending disposal of the appeal subject to the condition that the petitioner / Accused No.2 shall execute 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 learned District Munsif cum Judicial Magistrate, Omalur and on further condition that the petitioner shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m. until further orders.

11 The Registry is also directed to prepare the typed set of documents and expedite the final hearing of this appeal.

-sd/-
13/11/2017

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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, OMALUR.

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

3 THE ADDL. DISTRICT AND SESSION
JUDGE (FAST TRACK COURT NO.1), SALEM.

4 THE SUPERINTENDENT,
WOMEN SPECIAL PRISON, VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
THEEVETTIPATTI POLICE STATION,
SALEM DISTRICT.

COPY TO

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

+1 C.C. to M/S.P.PALANIKUMAR Advocate on payment of necessary
charges-Sr.20806

Order

in
CRL MP.11039/2017

in
CRL A.553/2017

Date :13/11/2017

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

ths : 14.11.2017