

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirtieth 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.13654 of 2017

IN CRL A.694/2017

M.CHINNATHAMBI

[PETITIONER]

Vs

THE STATE REP BY
THE INSPECTOR OF POLICE,
KUNDADAM POLICE STATION,
COIMBATORE DISTRICT.
CRIME NO.2698/2012.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal NO.694 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the learned Sessions Judge, Mahila Court, (Fast Track Court) Tiruppur in S.C.No.174/2013 dated 12.04.2017 and the appellant may be enlarged on bail, pending disposal of the above Criminal Appeal NO.694 of 2017 .

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal NO.694 of 2017 on the file of the High Court and upon hearing the arguments of MR.A.JOTHEESWARAN, Advocate for the petitioner and of MR.R.RAVICHANDRAN, GOVERNMENT ADVOCATE, [CRL.SDIE] 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 the sole accused in SC No.174 of 2013 on the file of Mahila Fast Track Court, Tiruppur / II Additional District Munsif, Tiruppur and stood charged and tried for the commission of offence under Section 302 of IPC and the trial Court vide impugned Judgement dated 12.04.2017 has convicted him and sentenced him to undergo Rigorous Imprisonment for life with a fine of Rs.2,000/- with default sentence of one year Rigorous Imprisonment and also granted set-off under Section 428 of Cr.P.C. And challenging the legality of the conviction and sentence has filed this appeal and pending disposal of the same prays for suspension of sentence.

2 The learned counsel appearing for the petitioner /

appellant / sole accused would contend that the conviction has been recorded solely on the basis of the Judicial dying declarations recorded by PW8 and PW9 and marked as Exs.P5 and P6 and at the time of recording the dying declarations, the victim was not in a fit state of mind and physical condition to give dying declaration and that apart, the parents were also present by her side and there was every possibility of inducement to implicate the appellant / accused and would submit that there are very many inconsistencies and infirmities in the case projected by the prosecution and since the appellant /accused is having a bright chance of success in the appeal, prays for suspension of sentence.

3. Per contra, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] appearing for the State would contend that the conviction can be recorded solely on the basis of the dying declaration and invited the attention of this Court to the impugned Judgment and would submit that on receipt of the information, PW14 went to the Government Hospital and recorded the statement and marked as Ex.P7 in which the victim had stated about the role played by the petitioner/ appellant / accused and the said statement, is consistent with judicial dying declaration marked as Ex.P5 and P6 and the Trial Court on perusal of oral and documentary evidence has rightly reached the conclusion to convict and sentence him.

4. This Court has considered the rival submission and also perused the materials placed before it.

5. A perusal of the impugned judgement would prima facie disclose that the statement in the form of dying declaration though not a judicial one, was given by the victim under Ex.P7 to PW14 as to the role / overt act on the part of the appellant / accused and it is substantiated by the judicial dying declarations recorded by PW8 and PW9 under Ex.P5 and P6 respectively and it is a well settled position of law that the conviction can be recorded on the basis of dying declarations though multiple if it, consistent with each other.

6. In the considered opinion of the Court, no case has been made out for granting suspension of sentence. Therefore, this miscellaneous petition is dismissed.

-sd/-
30/11/2017

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 SESSIONS JUDGE,
MAHILA COURT (FAST TRACK COURT)
TIRUPPUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE STATE REP BY
THE INSPECTOR OF POLICE,
KUNDADAM POLICE STATION,
COIMBATORE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

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

C.C. to M/S.A.JOTHEESWARAN Advocate on payment of necessary
charges

Order

in
CRL MP.13654/2017

in
CRL A.694/2017

Date :30/11/2017

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MLT-11/12/2017