

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fourth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice SATRUGHANA PUJAHARI

CRIMINAL MISCELLANEOUS PETITION No.14315 of 2017

IN CRL A.724/2017

KAVITHA,

[PETITIONER/APPELLANT/ACCUSED]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
KEEZHKUPPAM POLICE STATION,
VILLUPURAM DISTRICT
CR.NO.197 OF 2016.

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.724 OF 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed Learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District by a Judgment dated 16.09.2017 in S.C.No.346 of 2016 and enlarge the petitioner on bail pending disposal of the above Crl.A.No.724 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.724 of 2017 on the file of the High Court and upon hearing the arguments of M/S.JOHN SATHYAN, Advocate for the petitioner and of MR. R.RAVICHANDRAN, Govt. 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 A3 out of 3 accused in SC.No.346/2016 on the file of the Court of the I Additional District and Sessions Judge, Kallakurichi.

2 The petitioner / appellant along with A1 and A2, stood charged and tried for the commission of the offences u/s.120[B] r/w 302, 364 r/w 109 and 302 r/w 109 IPC. A1 and A2 were also charged for the commission of the offences u/s.102[B] r/w 302, 364, 328, 302, 404 and 201 r/w 302 IPC.

3 The Trial Court, vide impugned Judgment dated 16.09.2017,

had convicted and sentenced the accused as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A1 and A2	120[B] read with 302 IPC	Each of the accused to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.
	364 IPC	Each of the accused to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.
	328 IPC	Each of the accused to undergo ten years rigorous imprisonment and to pay a fine of Rs.1000/- and in default, to undergo one month simple imprisonment.
	302 IPC	Each of the accused to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.
	404 IPC	Each of the accused to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- and in default, , to undergo one month simple imprisonment.
	201 read with 302 IPC	Each of the accused to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.
A3	120[B] read with 302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.
	364 read with 109 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.
	302 read with 109 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default, to undergo one month simple imprisonment.

The sentences awarded to all the accused, were ordered to run

concurrently. The petitioner / appellant [A3] aggrieved by the conviction and sentence recorded by the Trial Court, vide impugned Judgment, has filed this appeal and pending appeal, she prays for the suspension of the sentences.

4 The case of the prosecution, briefly narrated is that the petitioner / appellant [A3] is the paramour of A1, namely, Samsudeen, and the deceased Senthil was her husband. The deceased used to borrow money heavily and also borrowed from P.W.15 with whom also, he had illicit intimacy. The deceased on becoming aware of the fact that his wife / petitioner / appellant [A3] is having illicit relationship with A1, used to castigate her and also asked to mend her ways. The deceased for the purpose of settling the debts of P.W.15, threatened A1 by stating that he will expose the relationship between A1 and his wife / A3 [petitioner herein] and demanded a sum of Rs.5 lakhs and as such, A1 had developed enmity with the deceased. Accordingly, on 08.09.2016 at about 4.00 p.m., at Rembalur North Madhavi Road, near Uzhavar Sandhai and also near the Supermarket, A1 along with his friend A2 and paramour / petitioner [A3] hatched conspiracy to do away with the life of the husband of A3, viz., Senthil and accordingly, on 16.09.2016, A1 took the deceased Senthil in his Car for the purpose of getting the money demanded by him and the deceased was already under the influence of alcohol and A1 along with A2 made the deceased to sit on the front seat of the Bolero Car bearing Registration No.TN-46-M-0820 and put sleeping pills in the cool drink and asked the deceased to take it and near Kaduvanur-Ravuthanallur Road, A2 put the nylon wire on the neck of the deceased and A1 smothered him and committed the murder.

5 Mr.John Sathyan, learned counsel appearing for the petitioner / appellant [A3] would contend that even assuming without admitting that the motive aspect has been proved by the prosecution through the testimonies of P.Ws.3, 4 and 5, has miserably failed to prove the conspiracy angle on the part of the petitioner / appellant [A3] and would further add that the only evidence available is the testimony of P.W.14, who is also closely related to the deceased and despite the fact that he overheard the conversation of A1 to A3 on 08.09.2016, viz., the conspiracy hatched by them to do away with the life of Senthil, he did not disclose the said fact though he was present in the Government Hospital and he was examined by the Investigating Officer, nearly a week from the date of commission of the offence and his testimony is highly artificial and cannot be believed and except his testimony, no other evidence is available to connect the petitioner / appellant [A3] with the commission of the offence. He would further submit that since the petitioner / appellant [A3] is having a bright chance of success in this appeal, he prays for suspension of sentence.

6 *Per contra*, Mr.R.Ravichandran [Crl.Side] would vehemently contend that the prosecution, through the testimonies of P.Ws.3, 4 and 5 was able to prove the motive on the part of the accused to do away with the life of the deceased Senthil - husband of the petitioner / appellant [A3] and that apart, he has also produced the Call Records after getting necessary certification under section 65-B of

the Indian Evidence Act, 1872 and the said documents were also marked as Exs.P.13, 14, 16 and 17 and the said documents would prove that the petitioner / appellant [A3] was having conversation through her mobile phone bearing No.9943407724 and since the prosecution was able to prove the chain of circumstances, connecting the petitioner / appellant [A3] with the commission of the offence, the Trial Court has rightly convicted her and would further add that the points urged by the learned counsel appearing for the petitioner / appellant [A3] can be adjudicated only at the time of final hearing of the appeal and prays for dismissal of this petition.

7 This Court has considered the rival submissions and also perused the materials placed before it.

8 This Court, on going through the impugned judgment and the deposition copies of P.Ws.3, 4, 5, 14, 15 and 16, is *prima facie* of the view that the prosecution was able to prove the motive aspect. Insofar as the conspiracy is concerned, according to the prosecution, they have sustained their case through the documents, viz., Exs.P.13, 14, 16 and 13. It is the vehement and forceful submission of the learned Government Advocate [Crl. Side] that the mobile number 9943407724 is registered in the name of the petitioner / appellant [A3] and whereas, in paragraph No.37 of the impugned Judgment, the Trial Court records a finding that the said mobile number is registered in the name of A1-Samsudeen and that apart, A1 was also having yet another mobile number - 7502032951. Thus, this Court is *prima facie* of the view that the said mobile number was registered in the name of A1. The only evidence to connect the petitioner / appellant [A3] with the commission of the offence is the testimony of P.W.14 and in the chief examination, P.W.14 would depose that on 08.09.2016 at about 4.00 p.m., he along with his uncle's son, viz., Ranjith, after having tea, went near Uzhavar Sandhai to smoke cigarette and at that time, saw A1, A3 and another person, having conversation to do away with the life of the deceased and anticipating problem, he did not disclose the fact to anybody and thereafter, on 16.09.2016, he heard about the murder of his relative, viz., Senthil - husband of the petitioner / appellant [A3] and he was examined by the police on 20.09.2016. In the cross-examination, he would depose that he did not inform the fact of overhearing the conversation among A1, A3 and another, either to his uncle or to P.W3-Sakunthala or to the parents of the petitioner / appellant [A3] and as regards seeing the deceased in the company of A1 and A2, he did not inform the said fact also. In the considered opinion of this Court, the testimony of P.W.14 *prima facie* appears to be artificial and though he is closely related to the deceased, he did not inform the fact to his parents or to the parents of the deceased and further that he was examined by the police nearly four days after the date of commission of the offence of murder.

9 In the light of the above facts and circumstances, this Court is of the view that the sentences imposed upon the petitioner / appellant [A3] is to be suspended.

10 In the result, the petition is ordered and the substantive sentences of imprisonment alone in respect of the petitioner herein, are suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner 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 Judicial Magistrate, Kallakurichi and on further condition that the petitioner shall appear before the said Court / Committal Court on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

11 The Registry is directed to accord priority and expedite the final hearing of this criminal appeal.

-sd/-
04/12/2017

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 JUDICIAL MAGISTRATE,
KALLAKURICHI.

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM. [FOR INFORMATION]

3 THE III, ADDITIONAL DISTRICT
AND SESSIONS JUDGE, KALLAKURICHI,
VILLUPURAM DISTRICT.

4 THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN-VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
KEEZHKUPPAM POLICE STATION,
VILLUPURAM DISTRICT

COPY TO

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

+1 C.C. to M/S.R.JOHN SATHYAN Advocate on payment of necessary charges-Sr.21974

Order

in
CRL MP.14315/2017

in
CRL A.724/2017

Date :04/12/2017

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
ths : 07.12.2017