



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Saturday, the Twenty Eighth day of April Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice C.T.SELVAM
and
The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.3444 of 2018
IN
CRL A(MD) No.59 of 2018

PALRAJ,

... APPELLANT/ACCUSED NO.1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
PANAVALALICHATRAM POLICE STATION,
TIRUNELVELI DISTRICT.
(CRIME NO.102/2015)

... RESPONDENT/COMPLAINANT

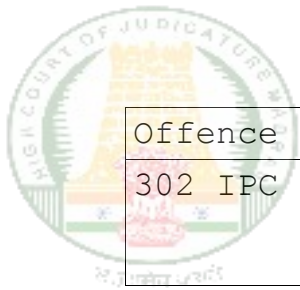
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence passed in SC No. 751 of 2016 dated 19.01.2018 on the file of IV Additional District and Session Court, Tirunelveli enlarge the petitioner /Accused No. 1 on bail pending disposal of the above appeal

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.MOHIDEEN BASHA, Advocate for the petitioner and of MR.C.CHANDRASEKARAN, Additional Government Pleader for the Respondent the court made the following order:-

[Order of the Court made by **C.T.SELVAM, J.,**]

Petitioner is arrayed as the first accused in S.C.No.751 of 2016, on the file of the learned Fourth Additional District and Sessions Judge, Tirunelveli and under Judgment dated 19.01.2018, he has been convicted and sentenced as follows:

Offence	Sentence
201 IPC	To undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.



Offence	Sentence
302 IPC	Life imprisonment and fine of Rs.1,000/- in default to undergo one year rigorous imprisonment.

Petitioner has come forward with the above miscellaneous petition, seeking relief of suspension of sentence pending appeal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

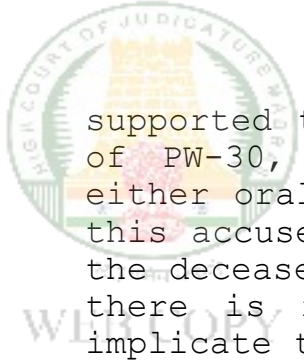
3. The case of the prosecution is that there was a previous enmity between the accused and the deceased in respect of purchase of ancestral property and on account of the same, the accused hatched a conspiracy to do away with the deceased. On 18.05.2015, during midnight, the accused entered into the house of the deceased and constricted her neck using a towel and thereafter, they took the dead body in a jeep, bearing Registration No.TN.09-G-1256 and put the dead body in a septic tank and thereafter, set the body on fire. Case was registered in Crime No.102 of 2015, on the file of the respondent police and the same, on completion of investigation, filing of final report and on committal, was tried by the Fourth Additional District and Sessions Judge, Tirunelveli in S.C.No.751 of 2016 and under Judgment dated 19.01.2018, the first accused was convicted for the offences under Sections 201 and 302 of the Indian Penal Code.

4. Learned counsel for the petitioner submitted that this is a case based on circumstantial evidence. Pursuant to the confession statement allegedly made by the first accused, the dead body of the deceased was found in a septic tank and the circumstances projected by the prosecution have not been proved beyond reasonable doubt. Learned counsel further submits that the petitioner is confined at Central Prison, Palayamkottai. Submitting as above, learned counsel prays for the grant of relief of suspension of sentence imposed on the petitioner/first accused.

5. Per contra, learned Additional Public Prosecutor contended that the prosecution has established its case beyond all reasonable doubt. He strongly opposed grant of relief of suspension of sentence to the petitioner. He further submitted that both the DNA Test and the superimposition test conducted on the body of the deceased had confirmed that the body found in the septic tank was that of the deceased and the circumstances projected by the prosecution have been clearly established.

6. We have considered the above submissions.

<https://hcservices.ecourts.gov.in/hcservices/> to establish the position that the body of the deceased had been found at the instance of the accused, PW-6 and PW-7 were examined, but, they have turned hostile and they have not



supported the case of the prosecution in any manner. The admission of PW-30, the Investigating Officer that there was no evidence either oral or documentary to substantiate the position that it was this accused, who had pointed out the place, where the dead body of the deceased had been found. The Trial Court has taken the view that there is no necessity for the Investigating Officer to falsely implicate the accused. It is not for the petitioner/first accused to explain why he would be falsely implicated. It is for the prosecution to prove its case through positive evidence. The Court must resist temptation of overlooking the need for positive evidence against the accused, when over all scenario on the face of its suggests the involvement of the accused.

8. Considering the facts and circumstances of the case and the submission of both sides and also considering that the appeal is not likely to be heard in the near future, this Court considers it appropriate to suspend the substantive portion of sentence imposed on the petitioner.

9. Accordingly, the substantive sentence of imprisonment alone is suspended in respect of the petitioner/first accused and he is directed to be enlarged on bail on condition that he shall execute a bond in 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, Sanakarankovil and on further condition that petitioner shall report before the said Court on the first working day of every English Calendar month at 10.30 a.m. pending appeal.

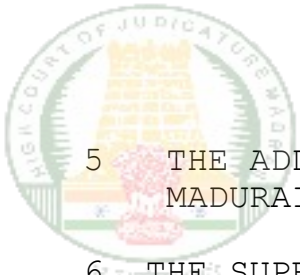
sd/-
28/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUNELVELI
- 2 THE JUDICIAL MAGISTRATE, SANKARANKOVIL
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
TIRUNELVELI DISTRICT
- 4 THE INSPECTOR OF POLICE,
PANAVADALICHATRAM POLICE STATION,
TIRUNELVELI DISTRICT.



5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

6 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

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+1. C.C. to M/S.N.MOHIDEEN BASHA Advocate SR.No.7764

GJM/CM/VR/GSR/28.4.18-4P-8C

ORDER

IN

CRL MP (MD) No.3444 of 2018

IN

CRL A (MD) No.59 of 2018

Date :28/04/2018