

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Thirteenth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.1334 of 2019

IN CRL.A.NO.499 of 2018

MARIMUTHU,

[PETITIONER/APPELLANT/ACCUSED]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
KONDALAMPATTI POLICE STATION,
SALEM DISTRICT.
CR.NO.626 OF 2012.

[RESPONDENT/COMPLAINANT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspended the sentence which was imposed by the Learned III Additional Sessions Judge Salem District in S.C.No.325 of 2016 dated 22.06.2018 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal No.499 of 2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.A.ARASUGANESAN, Advocate for the petitioner, and of MR.R.PRATHAP KUMAR (ADDITIONAL PUBLIC PROSECUTOR), 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 and he stood charged, tried and convicted the Trial Court for the offence u/s.302 IPC vide impugned judgment dated 22.06.2018 in SC.No.325/2016 and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/-, with a default sentence of six months rigorous imprisonment and also granted set-off u/s.428 Cr.P.C. Challenging the said conviction and sentence, the petitioner/appellant preferred Crl.A.No.325/2016 and pending appeal, he has filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The learned counsel for the petitioner has drawn the attention of this Court to the impugned judgment as well as the testimonies of the witnesses and would submit that the case of the prosecution, admittedly rests upon circumstantial evidence and except the testimony of P.W.5 who is said to have seen the deceased in the company of the petitioner/appellant, no other materials have been produced by the prosecution to connect the petitioner/appellant with the commission of the crime and would further urge that since very many vital links are missing in the chain of circumstances, the Trial Court, in any event, ought to have awarded benefit of doubt and acquitted the petitioner/appellant/accused and since the petitioner is having a bright chance of success in this appeal, prays for suspension of the substantive sentence of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the relationship between the deceased and the petitioner/appellant had been spoken to by P.Ws.1 to 3, sisters of the deceased and the last seen theory is also spoken to by P.W.5 and it is amply supported by the scientific evidence and since the prosecution has proved the chain of circumstances pointing out the guilt on the part of the petitioner/appellant/accused beyond any reasonable doubt and the Trial Court has rightly convicted and sentenced him and prays for dismissal of this petition.

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

5 The case of the prosecution is that the deceased was married and so also the petitioner/appellant/accused and he was eking out his livelihood as a Mason and while was doing his job in the house of one Vasantha, he developed acquaintance with the deceased and about 20 days prior to the commission of the crime, the deceased told him that she became pregnant and pestered him to get married to her and also used to give telephonic calls to him pressuring him to marry her and fearing that she will expose the said relationship, took her on 21.12.2012 at about 7.30 hours and murdered her. The acquaintance / relationship between the petitioner/appellant/accused and the deceased has been spoken to by P.Ws.1 to 3 - the sisters of the deceased, so also P.W.4-brother-in-law of the deceased in the cross-examination. The last seen theory is also spoken to by P.W.5 and a perusal of the cross-examination would prima facie disclose that nothing useful was elicited in favour of the petitioner/accused and the testimony of P.W.9 is also supported by the Postmortem Certificate marked as Ex.P.7 and so also the Biological and Serological Reports marked as Exs.P.24 to 29. In the considered opinion of the Court, the points now urged by the learned counsel for the petitioner can be appreciated only at the time of hearing of the criminal appeal for final disposal. There are enough materials prima facie available to connect the petitioner/appellant to the commission of the crime and therefore, it is not a fit case to grant the relief as sought for.

6 Hence, the miscellaneous petition stands dismissed.

-sd/-
13/02/2019

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 III ADDITIONAL SESSIONS JUDGE,
SALEM, SALEM DISTRICT

2 THE SUPERINTENDENT,
CENTRAL PRISON SALEM,
SALEM DISTRICT.

3 THE INSPECTOR OF POLICE,
KONDALAMPATTI POLICE STATION,
SALEM DISTRICT

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.J.C.DURAIRAJ Advocate on payment of necessary charges

Order

in

CRL MP.1334/2019

in

CRL.A.NO.499/2018

Date :13/02/2019

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