

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourteenth 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.2220 of 2019

IN CRL.A.NO.613 OF 2018

S.C.NO.56 OF 2008

[ON THE FILE OF THE SESSIONS JUDGE.FAST TRACK MAHILA COURT,
THIRUVANNAMALAI]

VIJAYAKUMAR

[PETITIONER]

Vs

STATE REPRESENTED BY [RESPONDENT]

THE INSPECTOR OF POLICE,
VANDAVASI SOUTH POLICE STATION,
THIRUVANNAMALAI DISTRICT.
CR.NO. 36 OF 2007.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.613 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Learned Sessions Judge, Fast Track Mahila Court, Thiruvannamalai in SC.No.56 of 2008 vide Judgment dated.17.9.2018, convicting the petitioner to undergo Imprisonment for life for the offences U/s 302 of IPC and convicting the petitioner to undergo Rigorous imprisonment for 10 years enlarge him on bail pending disposal of the criminal Appeal in C.A.NO.613/2018,

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.613 of 2018 on the file of the High Court and upon hearing the arguments of M/S.P.SURESH 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 arrayed as the sole accused and he stood charged, tried and convicted by the Trial Court for the offences u/s.394 and 302 IPC vide impugned judgment dated 17.09.2018 in SC.No.56/2008 on the file of the Court of the Sessions Judge, Mahila Court, Tiruvannamalai, and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- with a default sentence of six months simple imprisonment for the offence u/.302 IPC and to undergo 10 years rigorous imprisonment and to pay a fine of

Rs.5000/- with a default sentence of six months imprisonment. The Trial Court had ordered the sentences to run concurrently and also granted set-off u/s.428 Cr.P.C. Challenging the said conviction and sentence, the petitioners/appellants preferred the present appeal and pending appeal, he has filed the present petition seeking suspension of the substantive sentence of imprisonment.

2 The case of the prosecution is that the deceased was a resident of Door No.168 of Arani-Vandavasi Road, Ammaiyampatti, Vandavasi and between 00.00 hours midnight and 2.00 a.m., on 20.03.2007 and 21.03.2007, taking advantage of her loneliness, the petitioner/appellant/accused with a view to steal the jewels and for the purpose of causing death, trespassed into her house and strangled her by using his hands and also using the chain worn by the deceased and also pushed her against the floor and also smothered her by using a pillow and after causing her death, removed the jewels.

3 P.W.1 is the son of the deceased and according to him, till 6.00 a.m., on 21.03.2007, his mother did not come out and when he pushed the door, it opened and he found his mother with bleeding injuries and raised the alarm and also found the jewels worn by her were also found missing and he went to the jurisdictional police station and lodged a complaint under Ex.P.1. P.Ws.2 and 3 were examined by the prosecution as to the last seen theory and P.W.2 would depose that he saw the petitioner/appellant/accused in front of the house of the deceased and when P.W.2 questioned the petitioner/appellant as to why he was there, he told P.W.2 that the deceased did not open the door and that is why he is waiting outside. P.W.3 would depose that he saw the petitioner/appellant/accused at about 12.30 a.m. on 21.03.2007 and when he questioned, the petitioner/appellant/accused told him that he came just now from his work and that he was proceeding to his house and he became aware of the death of the deceased only on the next day morning.

4 The other witnesses, viz., P.Ws.4 and 5, merely deposed about the factum of the death and P.W.6 - doctor, who conducted autopsy, would depose that the deceased would have died on account of the injuries sustained and also due to asphyxia. P.W.8-the Dog Squad Inspector would depose about the taking of the dog to the scene of crime. P.W.9 was the witness who was examined in connection with the arrest and recovery and he has deposed that on 23.03.2007, he saw the police examining the petitioner/appellant/accused and in his presence, the petitioner/appellant/accused voluntarily came forward to give the confession statement and on the basis of the admissible portion of the confession statement [Ex.P.3], the jewels, marked as M.Os.1 to 9, were recovered and he signed the Seizure Mahazar and his signatures were marked as Exs.P.4 to 6. P.W.10-Pawn Broker would depose that on 21.03.2007, the petitioner/appellant/accused had pledged certain jewels with him and he received the receipt under Ex.P.7 and gave a sum of Rs.5200/- and thereafter, the police seized the said documents and jewels under the cover of Mahazar[Ex.P.8].

5 The learned counsel for the petitioner would submit that the case of the prosecution rests upon circumstantial evidence and by

inviting the attention of this Court to the testimony of the above said witnesses, he would submit that though the prosecution would claim that the petitioner/appellant/accused was arrested on 23.03.2007, in the presence of P.W.9, P.W.1 in his cross-examination would admit that he saw the petitioner/appellant/accused when he went to the police station on the next day of the occurrence to lodge the complaint and he also saw P.W.9 and therefore, the arrest and alleged recovery as spoken by P.W.9 lost its credibility. It is the further submission of the learned counsel for the petitioner that as regards the last seen theory said to have been spoken to by P.Ws.2 and 3, it is the evidence of P.W.1 himself that whenever anybody comes after 10.00 p.m., to the house of the deceased, they used to press the calling bell and the deceased used to come and open the door and P.W.2 who is also an auto driver would depose that when he enquired the petitioner/appellant/accused on the early morning hours on 21.03.2007, he told that he was waiting for the mother of P.W.1 to open the door and P.W.3, who is also another witness to the last seen theory, had deposed that on enquiry, the petitioner/appellant/accused had replied that he has just returned from his work and that he was proceeding to his house. Therefore, the testimonies of P.Ws.2 and 3 is of no help to connect the petitioner/appellant/accused with the commission of the crime. It is the further submission that P.W.10-pawn broker would admit that the receipt did not contain the name of the shop and that kind of receipt may be procured / prepared even outside also and prior to the pledging of the jewels, he did not know the petitioner/appellant/accused and only on account of the case, he became aware of the identity of the petitioner/appellant/accused. In sum and substance, the learned counsel would submit that except the above testimonies and materials, there are no other materials to connect the petitioner/appellant/accused with the commission of the crime and since the case of the prosecution rests upon the circumstantial evidence, the chain of circumstances unerringly pointing out the guilt on the part of the accused, is not complete and the Trial Court ought to have awarded benefit of doubt and he would further urge that since there is a bright chance of success for the petitioner / appellant in this appeal, he prays for suspension of the substantive sentence of imprisonment.

6 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the testimonies of the witnesses, especially, P.Ws.2, 3, 8 and 9, had completed the chain of circumstances connecting the petitioner/appellant/accused with the commission of the crime and the scientific evidence has also proved that the deceased had died on account of homicidal violence and the grounds urged by the learned counsel for the petitioner/appellant can be appreciated only during the course 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 including the impugned judgment.

8 P.W.1 was not an eyewitness to the occurrence and even according to him, the deceased was residing in a portion of the house and whenever any person comes to the portion of the deceased house,

they used to press the calling bell and it was the deceased who used to open the door. P.Ws.2 and 3 were the witnesses to the last seen theory and they would depose about the presence of the petitioner/appellant/accused as well as the explanation offered by him when he was questioned by P.Ws.2 and 3 and their testimonies, *prima facie* would disclose that there was nothing unusual on the part of the petitioner/appellant/accused waiting in front of the house of the deceased and his explanation also *prima facie* appears to be acceptable. It is also the evidence of P.W.1 that on the next day, when he went to the police station to lodge a complaint on 21.03.2007, he saw the petitioner/appellant/accused along with P.W.9 and other witnesses in the police station and whereas according to P.W.9, the accused was arrested on 23.03.2007 and thereafter, the recovery was effected as per the admissible portion of the confession statement. In the light of the said testimony, the arrest and recovery also becomes doubtful. Insofar as pledging of some of the jewels and the statement of P.W.10-Pawn Broker is concerned, in his cross examination, P.W.10 would admit that prior to pledging of jewels, he was not aware of the identity of the accused and only after the occurrence, he became aware of the identity and insofar as Ex.P.7 - receipt is concerned, it did not contain the name or seal of the shop and it can be printed and procured from outside also. Thus, this Court, on a consideration and appreciation of the materials, is *prima facie* of the view that the chain of circumstances connecting the petitioner/appellant/accused with the commission of crime, has not been completed and in the light of the reasons assigned above, the plea for suspension of the substantive sentence of imprisonment of the petitioner/appellant/accused pending appeal, requires consideration.

9 In the result, the petition is **ordered** and the substantive sentences of imprisonment alone in respect of the petitioner/appellant herein, are suspended and the petitioner/appellant is directed to be enlarged on bail on condition that the petitioner/appellant 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, Vandavasi, Tiruvannamalai District and on further condition that the petitioner/appellant shall appear before the Committal Court, on the first working day of **every week** at 10.30 a.m. until further orders.

-sd/-

14/02/2019

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 JUDICIAL MAGISTRATE,
VANDAVASI, TIRUVANNAMALAI DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUVANNAMALAI [FOR INFORMATION]

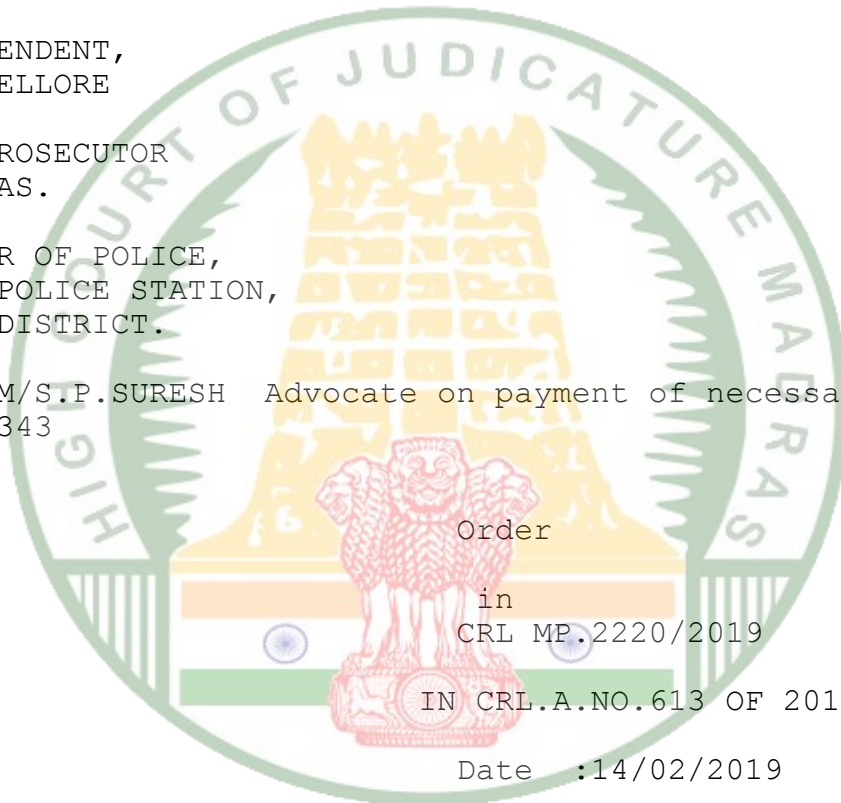
3 THE SESSIONS JUDGE
FAST TRAK MAHILA COURT,
THIRUVANNAMALAI

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
VANDAVASI SOUTH POLICE STATION,
THIRUVANNAMALAI DISTRICT.

+1 C.C. to M/S.P.SURESH Advocate on payment of necessary
charges SR.NO. 3343



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RD 19/02/2019

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