

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Nineteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.12815 OF 2018

& CRL.A.NO.584 OF 2018

MUTHULAKSHMI

[PETITIONER / APPELLANT /
ACCUSED]

Vs

STATE REP. BY
INSPECTOR OF POLICE,
KALLAVI POLICE STATION,
KRISHNAGIRI DISTRICT,
CR.NO. 27 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.584 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in Judgment in Special S.C.No. 26 of 2015, on the file of the Session Judge Fast Track Mahila Court, Krishnagiri dated 10.08.2018 and enlarge the petitioner on bail, pending disposal of the above CRL.A.NO.584 OF 2018 [IN CRL.MP.NO.12815 OF 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.584 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.R.THAMARAISELVAN, 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 was arrayed as A2 in S.C.No.26 of 2015 on the file of the Fast Track Mahila Court, Krishnagiri. A1 is the father-in-law of P.W.1/deceased sister and A2 is daughter-in-law of A1 and also second wife of Gopalakrishnan/son of A1. A1 was charged for the commission of offence under Section 5(1) r/w. 6 of POCSO Act and the petitioner / appellant / A2 herein was charged for the commission of offence under Section 302 r/w 109 IPC. The Trial Court, vide impugned judgment dated 10.08.2018 made in Special S.C.No.26 of 2015, had convicted A1 for the commission of offence

under Section 302 IPC and imposed a sentence of Rigorous Imprisonment for Life and to pay a fine of Rs.2,500/- in default to undergo 1 year Rigorous Imprisonment and for the offence under Section 5(1)(m) of POCSO Act, imposed with a sentence of Rigorous Imprisonment for Life and to pay a fine of Rs.2,500/- in default to undergo 1 year of Rigorous Imprisonment. Insofar as the petitioner / appellant / A2 is concerned, she was found guilty for the commission of offence under Section 302 read with 109 IPC and imposed a sentence of Rigorous Imprisonment for Life and to pay a fine of Rs.2,500/- in default to undergo 1 year of Rigorous Imprisonment. The sentence of imprisonment passed against A1 was ordered to run concurrently.

2. The appellant / A2, challenging the said conviction and sentence passed vide impugned judgment, has filed this Criminal Appeal and pending disposal of the same, filed a petition for suspension of substantive sentence of imprisonment.

3. The learned counsel appearing for the petitioner would submit that the case of the prosecution is that the deceased child aged about 6 years was born to the sister of P.W.1, who died later and thereafter, the husband of the deceased sister namely Gopalakrishnan married the petitioner / appellant / A2. The child born out of the first wedlock was continued to be in the care and custody of A1 and A2. A1 and A2 had developed illicit intimacy and since the child said to have seen, both of them fearing that the child may spill out the said information, decided to do away with the life of the child. The prosecution further alleges that A1 had seriously assaulted the child and as a consequence, she died and thereafter, both A1 and A2 took the body of the child and throw into the Well.

4. The learned counsel appearing for the petitioner would submit that the case of the prosecution rests upon circumstantial evidence and to prove the chain of circumstances to link the accused for the commission of offence, the prosecution had examined P.W.s 5 and 6 who said to have seen A2 in the company of A1 and A1 keeping the deceased child on his shoulder and the Extra Judicial Confession given by A2 before P.W.7 VAO. Insofar as the motive aspect is concerned as to the murder, prosecution had examined P.W.s 11 and 12 and though their testimonies are genuine and corroborate on material particulars, still the prosecution is unable to prove the guilt on the part of A2 beyond any reasonable doubt and also drawn attention of this Court to the various portions in the impugned judgment and also made a submission that in the light of the clear inconsistency and infirmity, the petitioner / appellant / A2 is entitled for suspension of sentence and therefore, prays for suspension of substantive sentence of imprisonment.

5. Mr.R.Pratap Kumar, learned Additional Public Prosecutor appearing for the State would submit that the motive has been proved through the testimonies of P.W.s 11 and 12 and the Last Seen Theory is spoken to by P.W.s 5 and 6 and A2 voluntarily appeared before P.W.7/VAO and gave Extra Judicial Confession and the homicidal death of the child, especially offence under POCSO Act on the part of A1, has also been amply proved through scientific evidences and considering the nature and gravity of the offence, prays for dismissal of this petition.

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

7. A perusal of the testimonies of the above cited witnesses would disclose that some talks were hanging out as to the alleged illicit intimacy between A1 and A2 and it is the specific case of the prosecution that A1, the grandfather of the deceased / child, had committed the offence punishable under POCSO Act and therefore, sought to explain the same by stating that A1 and A2 had developed illicit intimacy and since the child said to have seen, both of them fearing that the child may spill out the said information, decided to do away with the life of the child. The witnesses to the Last Seen Theory namely P.Ws.5 and 6 would depose that A1 took over the body of the child on the night hours on the date of occurrence. It is to be remembered at this juncture that it is the admitted case of the prosecution that the child was in the custody of A1 and A2 and therefore, nothing usual on the part of A1 and A2 to seen together.

8. It is also a well settled position of law that Extra Judicial Confession can be relied upon, unless it is corroborated with material particulars through testimonies of other witnesses. It also appears from the evidence available through scientific evidence that the hymen of the deceased child was also ruptured and bleeding was also noted and the cause of the death was due to asphyxia. Thus it *prima facie* appears that the prosecution insofar as the petitioner / appellant / A2 is concerned, has failed to link the chain of circumstances unerringly pointing out the guilt on her part and therefore, she is entitled for suspension of substantive sentence of imprisonment.

9. In the light of the above facts and circumstances and reasons assigned above, this Court is of the opinion that it is a fit case wherein the sentence imposed upon A2 is to be suspended, pending disposal of the appeal. **Accordingly, this petition is ordered** and the substantive sentence of imprisonment imposed on the petitioner, is suspended subject to the condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties in a like sum to the satisfaction of District Cum Judicial Magistrate, Udhangarai, Krishnagiri District and she shall appear before the said Court on the first

working day of every English calender month at 10.30 a.m until further orders.

-sd/-
19/03/2019

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 SESSIONS JUDGE
FAST TRACK MAHILA COURT, KRISHNAGIRI.

2 THE DISTRICT CUM JUDICIAL MAGISTRATE,
UDHANGARAI, KRISHNAGIRI DISTRICT.

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN, VELLORE.

5 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
KALLAVI POLICE STATION,
KRISHNAGIRI DISTRICT.

+1C.C. to M/S.R.THAMARAISELVAN Advocate on payment of necessary charges SR NO.5669

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Order
in
CRL MP.12815/2018
in
CRL.A.584/2018

Date :19/03/2019

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