



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

Thursday, the Thirteenth day of June Two Thousand Nineteen

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PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and

The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) Nos.4542 and 4543 of 2019
IN

CRL A(MD) Nos.11 & 12 of 2019

RAMESH

... PETITIONER/ APPELLANT
IN CRL MP(MD). 4542/ 2019

SHYAMALA

... PETITIONER/ APPELLANT
IN CRL MP(MD). 4543/ 2019

- Vs. -

STATE REP. BY
THE INSPECTOR OF POLICE,
THALLAKULAM CRIME BRANCH POLICE STATION,
MADURAI DISTRICT.
CRIME NO.1321 OF 2015

... RESPONDENT/ RESPONDENT
IN BOTH THE PETITIONS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence of imprisonment imposed by the Principal District and Sessions Judge, Mahalir Neethimandram, Madurai in SC.No.255 of 2016 by the judgment dated 29.11.2018 and enlarge the petitioner/appellant on bail, pending disposal of the above said criminal appeal.

Prayer in CRL MP(MD). 4543/ 2019 :

To suspend the sentence of imprisonment imposed by the Principal District and Sessions Judge, Mahalir Neethi Mandram, Madurai in SC.No.166 of 2017 by the judgment dated 29.11.2018 and enlarge the petitioner/appellant on bail, pending disposal of the above said criminal appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner in CRL MP(MD) NO.4542 of 2019 and MR.G.KARUPPASAMY PANDIYAN, Advocate for M/S.R.JENIFER BIBIN, Advocate for the petitioner in CRL MP(MD)



No.4543 of 2019 and of MR.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent in both the petitions, the court made the following order:-

COMMON ORDER

(Order of this Court was made by **M.SATHYANARAYANAN, J**)

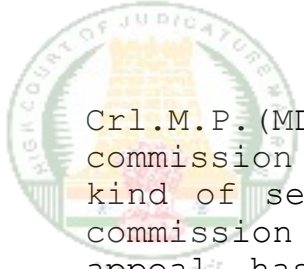
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Though on account splitting up of the cases A1 and A2 were tried separately and the trial Court by two separate judgments convicted the petitioners/appellants/A2 and A1, since the two cases arise out of the very same crime number and the facts are identical, both the petitions for suspension of sentence are disposed of by this common order.

2.The petitioner/appellant viz., Ramesh in Crl.M.P.(MD) No.4542 of 2019 is the sole accused in S.C.No.255 of 2016 and the petitioner/appellant viz., Shyamala in Crl.M.P.(MD) No.4543 is the sole accused in S.C.No.166 of 2017.

3.The case of the prosecution is that the deceased viz., Pavithra is the daughter of the defacto complainant/P.W.1 and wife of P.W.5 in S.C.No.255 of 2016 viz., Jeyakumar and since Jeyakumar was in gulf country she was residing along with her mother-in-law Jeyanthi, who was examined as P.W.2. The petitioner/appellant in Crl.M.P.No.4543 of 2019 is eking out his livelihood by working as a tailor and she used to stitch clothes for deceased Pavithra and she has developed intimacy with the petitioner in Crl.M.P.(MD) No.4542 of 2019 and both of them conspired to murder the deceased and to take away the jewels and in furtherance of their conspiracy, on 20.11.2015, at around 10.30 a.m., both the accused went to the house of the deceased together and they were given tea by the deceased. When the deceased was sitting in the chair, suddenly the petitioner in Crl.M.P.(MD) No.4543 of 2019 Shyamala caught hold of her hands and the petitioner in Crl.M.P.(MD) No.4542 of 2019 Ramesh strangled the deceased with nylon rope and pushed the deceased down and A1 - Shyamala took a knife from the house of the deceased and handed it over to A2 - Ramesh and he stabbed on her neck repeatedly and robbing the jewels from the house of the deceased, they flee from the place of occurrence.

4.The case of the prosecution case rests on circumstantial evidence. The case against Shyamala was split up and tried separately. However, the judgment in both cases came to be rendered on the same day. Accused Shyamala was found guilty under Sections 449 and 302 r/w 34 and 392 I.P.C. and was sentenced to undergo 10 years R.I. and to pay a fine of Rs.1,000/- with default sentence of 6 months S.I. for the commission of offence under Section 449 I.P.C., imprisonment of life and to pay a fine of Rs.1,000/- with default sentence of 6 months S.I. for the commission of offence under Section 302 r/w 34 I.P.C. and seven years R.I. and to pay a fine of Rs.1,000/- with default sentence of 6 months S.I. for the commission of offence under Section 392 I.P.C. The petitioner in



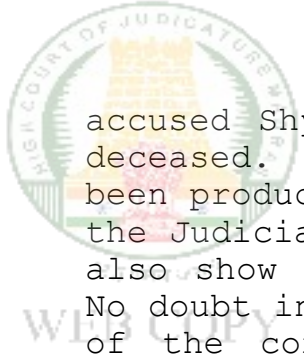
Crl.M.P.(MD) No.4542 of 2019 Ramesh was also found guilty for the commission of the same offences and he was also imposed with similar kind of sentences. The trial Court acquitted both of them for the commission of offence under Section 120(B) I.P.C., against which no appeal has been preferred. The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the petitioners in both the petitions have preferred the present appeals and pending appeal, they had filed the present petitions seeking suspension of the substantive sentences of imprisonment.

4.The learned counsel for the petitioners/appellants in both the petitions would submit that the only witness last seen is P.W.6 Abdul Kafoor as to the availability of the accused Shyamala in the house of the deceased. In his chief-examination he has stated that he went to the house of the accused to deliver the courier and when he knocked the door a woman asked her to hand over the courier to the house in the ground floor and accordingly he handed it over to the lady residing in the ground floor, however, in his cross-examination in S.C.No.122 of 2017 he would state that he contacted the telephone number given for enquiry and as per the instruction he has handed over the courier to the woman in the ground floor. P.W.16 Viswanathan, merely speaks about the arrival of the accused for the purpose of talking through the phone and he did not speak anything about the presence of the accused neither Ramesh nor Shyamala near the house of the deceased at the relevant point of time. It is also the submission of the learned counsel for the petitioner that except the arrest, recovery and the scientific evidence no other incriminating evidence has been produced by the prosecution and hence the petitioners/appellants/A1 and A2 are having a bright chance of success in these appeals, and prays for suspension of the substantive sentence of imprisonment.

5.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the testimonies of the witnesses have proved the prosecution case beyond reasonable doubt and the trial Court on proper appreciation of the entire evidence came to the conclusion, convicting and sentencing petitioners and the points raised by the learned counsel for the petitioners can be considered only at the time of final hearing and prays for dismissal of these petitions.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it including the impugned judgment.

7.Admittedly the accused were acquitted for the commission of the offences under Section 120(B) I.P.C. So far as the last seen theory is concerned P.W.5, as already stated prima-facie has not inspired confidence for the reason that in the cross-examination he has stated that the house of the deceased was closed and when he enquired over the phone he was instructed to hand over the courier in the ground floor and therefore, it cannot be stated either



accused Shyamala was present or rather seen in the company of the deceased. Insofar as accused Ramesh is concerned no evidence has been produced as to the last seen theory and the evidence of P.W.35, the Judicial Magistrate, who conducted the test identification would also show the concerned witness did not identify accused Shyamala. No doubt in pursuant to the arrest and based on the admitted portion of the confession recovery was effected, however, they did not identify the recovered jewels in the open Court. It prima-facie shows the circumstances projected by the prosecution against both the accused are not complete and as such the petitioners/appellants are entitled for suspension of the substantive sentences of imprisonment pending these appeals.

8. In the result, these petitions are partly allowed and the substantive sentence of imprisonment alone in respect of the petitioners/appellants is suspended and the petitioners/appellants are directed to be enlarged on bail on condition that the petitioners/appellants shall execute a bond for a sum of Rs.10,000/- [Rupees ten thousand only] each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.2, Madurai and on further condition that the petitioners/appellants shall appear before the Committal Court, viz., the Court of Judicial Magistrate No.2, Madurai [PRC.No.7/2016] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-
13/06/2019

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

TO

- 1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
MAHALIR NEETHI MANDRAM,
MADURAI.
- 2 THE JUDICIAL MAGISTRATE NO.II,
MADURAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.
- 4 THE INSPECTOR OF POLICE,
THALLAKULAM CRIME BRANCH POLICE STATION,
MADURAI DISTRICT.
- 5 THE SUPERINTENDENT,
<https://hcservices.ecourts.gov.in/hcservices/>
CENTRAL PRISON,
MADURAI.



6 THE SUPERINTENDENT,
CENTRAL PRISON (WOMEN CELL),
MADURAI.

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

+1. C.C. to M/S.G.KARUPPASAMY PANDIYAN, Advocate SR.No.9582
+1. C.C. to M/S.R.JENIFER BIBIN, Advocate SR.No. 9583

ORDER
IN
CRL MP (MD) Nos.4542 and 4543 of 2019
IN
CRL A (MD) Nos.11 & 12 of 2019
Date :13/06/2019

JM/VR/SAR 1/17.06.2019/5P/10C