



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

Tuesday, the Second day of July 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) No.5547 of 2019
IN
CRL A(MD) No.476 of 2018

KALEESWARAN

... PETITIONER/PETITIONER/
APPELLANT/ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
PALANI TALUK POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.113/2014

... RESPONDENT/RESPONDENT/
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 execution of the sentence dated 15.05.2017 passed in Spl SC.No.2 of 2015 against the petitioner/appellant by the Mahila Judge, Dindigul District and the petitioner/appellant who is remanded to judicial custody after judgment be released on bail pending disposal of above criminal appeal petition.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.K.MANIKANDAN, Advocate for the petitioner and of MR.K.DINESH BABU, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

The petitioner/appellant is the sole accused in Special S.C.No.2 of 2015 on the file of the Mahila Fast Track Court, Dindigul and he was charged for the commission of the offences under Sections 449, 302 (2 counts), 380, 366(A) and 376(2)(i) I.P.C. and Section 4 of Prevention of Children from Sexual Offences Act, 2012. The trial Court under the impugned judgment dated 15.05.2017 has convicted him and sentenced him as follows:

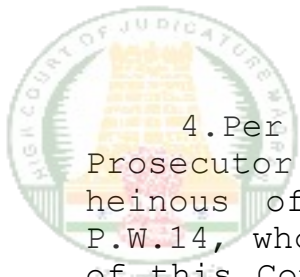


Conviction u/s.	Sentence awarded
449 IPC	To undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- with a default sentence of 6 months simple imprisonment.
302 IPC (2 counts)	To undergo imprisonment for life and to pay a fine of Rs.1,000/- for each count with a default sentence of 6 months simple imprisonment for each count.
380 IPC	To undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- with a default sentence of six months simple imprisonment.
363 IPC	To undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- with a default sentence of six months simple imprisonment.
Section 4 of Prevention of Children from Sexual Offences Act, 2012	To undergo imprisonment for life and to pay a fine of Rs.1,000/- with a default sentence of six months simple imprisonment.

The sentences were ordered to run concurrently and set off was also given under Section 428 I.P.C. Challenging the said conviction and sentence, the petitioner/appellant/Accused preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentences of imprisonment.

2.It is a case of double murder. According to the prosecution, the petitioner/accused was employed as a driver with one Dhanush, mother of P.W.4 - the victim girl and in that process, he had developed acquaintance with Dhanush and subsequently Dhanush developed close relationship with her relative Senthilkumar and hence she developed enmity with them. In the meanwhile, in the process of constructing a new school, Rs.23,00,000/- was kept in the bed room of Dhanush and on knowing the same, the petitioner armed with Aruval barged into the bed room of Dhanush and repeatedly cut Dhanush and Senthilkumar and on their death, he had stolen the cash available in the bed room and in that process he had taken the daughter of Dhanush - P.W.4 in Tata Mansa Car bearing registration number TN 57 AZ 6376 (M.O.13).

3.Mr.K.Manikandan, learned counsel appearing for the petitioner/ appellant/accused would submit that the case of the prosecution rests upon circumstantial evidence and there are very many infirmities, which writ large in the case projected by the prosecution. It is further pointed out that after conviction the petitioner/appellant is under incarceration nearly for 2 years and the appellant/accused has a bright chance of success in the appeal and hence prays for suspension of the substantive sentence of imprisonment.



4. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the State would submit that it is a case of heinous offences not only committing murder, but also ravishing P.W.14, who was aged about 14 year and he also invited the attention of this Court to the evidence of P.W.14, extracted in the judgment, and would submit that she is an affected witness and the points urged by the petitioner can be appreciated only at the time of final disposal of the appeal and prays for dismissal of this petition.

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

6. A perusal and consideration of the impugned judgment would *prima-facie* disclose that the prosecution was able to link the circumstances, which points out the guilt on the part of the petitioner/appellant. Even for the sake of arguments, the prosecution is unable to sustain the case for the commission of offence under Section 302 I.P.C. (2 counts), the testimony of P.W.4 would disclose that she was kidnapped when she was aged 14 and repeatedly subjected to physical abuse under threat and therefore, he was convicted for the commission of offence under Section 4 of Prevention of Children from Sexual Offences Act, 2012. That apart, it is pertinent to point out at this juncture that the petitioner was arrested on 07.06.2014 at 20.00 hours near Coimbatore Moffusil Bus Stand with the company of P.W.4 and as per the admissible portion of confession statement Ex.P.39, M.O.13 - Car and cash of Rs.17,50,000/- stolen from the deceased Dhanush have been recovered.

7. Considering the gravity of the offences committed coupled with the fact that the points urged by the appellant/accused can be considered only at the time final disposal, this Court is of the considered view that it is not a fit case, wherein the petitioner/appellant/accused is entitled for suspension of the substantive sentence of imprisonment pending this appeal. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
02/07/2019

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

TO

1 THE MAHILA JUDGE,
<https://hcservices.ecourts.gov.in/hcservices/>
DINDIGUL DISTRICT.



2 THE INSPECTOR OF POLICE
PALANI TALUK POLICE STATION,
DINDIGUL DISTRICT

3 THE SUPERINTENDENT ,
CENTRAL PRISON, MADURAI.

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

ORDER
IN
CRL MP (MD) No.5547 of 2019
IN
CRL A (MD) No.476 of 2018
Date :02/07/2019

sj
AE/JC/SAR-II (16.07.2019) 2P 5C