



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

Friday, the Twelfth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr.Justice R.PONGIAPPAN

CRL MP(MD) No.5667 of 2019

IN

CRL A(MD)No.7 of 2019

MAHALAKSHMI

... PETITIONER/ APPELLANT/
ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
THIRUNAGAR POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.94/2010)

... 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 sentence imposed against the appellant in S.C.No.315 of 2011 on the file of the Honourable Sessions Judge, Mahalir Neethimandram, Madurai (FAC) dated 29.11.2018 and release the appellant on bail till the disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.R.ALAGUMANI, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondents the court made the following order:-

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

The appellant is the petitioner/appellant/sole accused in S.C.No.315 of 2011, on the file of the Court of Sessions Judge, Mahalir Neethimandram, Madurai (FAC) and vide impugned judgment, dated 29.11.2018, was convicted for the commission of offences under Section 302 I.P.C. and was imposed with a sentence of life imprisonment and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for six months. Challenging the legality of the said conviction and sentence, the petitioner/appellant/sole accused preferred the present appeal and pending the appeal, she had filed this petition seeking suspension of the substantive sentences of imprisonment.



2. Dr.R.Alagumani, learned Counsel appearing for the petitioner/appellant/sole accused would submit that the appellant/accused is the first wife of P.W.2 and the deceased is the second wife of P.W.2 and the case of the prosecution is that the petitioner/appellant/sole accused, being the first wife, is unable to digest the fact that her husband - P.W.1 had kept the deceased under the same roof and therefore, with an intention to eliminate her from her way, on 20.03.2010 at about 03.30p.m., when the deceased was cleaning the kerosene stove, the accused herein poured kerosene on the deceased and set fire on her and consequently, she died. The primordial submission made by the learned Counsel appearing for the petitioner is that despite the fact that the injured survived for nearly one day, no attempts had been made by the investigating agency to record her dying declaration and invites the attention of this Court to the testimony of P.W.14- who treated the injured, while she was in hospital and pointed out that the injured, at the earlier point of time, had stated that she was not aware, as to how she caught fire and except P.W.5, who turned hostile to some extent, none of the witnesses had supported the case of the prosecution, as to the act of the petitioner/appellant/sole accused that she had poured kerosene upon the deceased Amutha and set fire on her and hence, prays for suspension of the substantive sentences of imprisonment.

3. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that despite the fact that the dying declaration has not been recorded, P.W.5 would extend the support of the case of the prosecution as the noted oral dying declaration of the victim as to the pouring of kerosene and set fire on the deceased by the appellant and hence, prays for dismissal of this petition.

4. This Court has carefully considered the rival submission and perused the materials placed before this Court.

5. P.W.14 - the casualty medical officer, who treated the injured, while she was admitted in the hospital with burn injuries, would state that the injured, at the earlier point of time, had stated that she does not know as to how she caught fire and she got burn injuries. P.W.5- who spoke about the oral dying declaration, turned hostile and though he would support the case of the prosecution to some extent, it *prima facie* appears that there was serious lapses in the investigation of the case, for the reason that the injured, after sustaining burn injuries, survived for nearly one day and no steps have been taken to summon the Magistrate to record her dying declaration. Though P.W.3 and P.W.4, in the chief examination, would state about the oral dying declaration, in cross-examination, they did not support the case of the prosecution. P.W.6 was the hearsay witness.

6. This Court, taking into consideration of the above facts and circumstances, is of the considered view that the



petitioner/appellant/sole accused is entitled for suspension of the substantive sentences of imprisonment pending the appeal.

7. In the result, the petition is allowed and the substantive sentences of imprisonment alone in respect of the petitioner/appellant/sole accused is suspended and the petitioner/appellant/sole accused is directed to be enlarged on bail on condition that the petitioner/appellant/sole accused 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 Sessions Judge, Mahila Court, Madurai and on further condition that the petitioner/appellant/sole accused shall appear before the Committal Court, viz., the Court of Judicial Magistrate No.VI, Madurai [PRC.No.109/2010] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-
12/07/2019

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

TO

1. THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI (FAC).
2. THE SESSIONS JUDGE, MAHILA COURT, MADURAI.
3. THE JUDICIAL MAGISTRATE NO.VI, MADURAI.
4. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.
5. THE OFFICER INCHARGE, SPECIAL PRISON FOR WOMEN, MADURAI.
6. THE INSPECTOR OF POLICE
THIRUNAGAR POLICE STATION, MADURAI DISTRICT.
7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.R.ALAGUMANI Advocate SR.No.11658

ORDER
IN
CRL MP(MD) No.5667 of 2019 in
CRL A(MD)No.7 of 2019
Date :12/07/2019

MS/PN/SAR-4/12.07.2019/3P.9C