



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

Thursday, the Eleventh day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.6217 of 2019

IN

CRL A(MD) No.454 of 2018

MUTHU

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ALLINAGARAM POLICE STATION,
THENI,
Crime No.328/2015

... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of Imprisonment imposed by the learned Additional District (Fast Track) Judge, Theni in S.C.No.17 of 2016 by the Judgment dated 10.09.2018 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.A.DORAISAMY, Senior Counsel for Mr.MUTHUMANI DORAISAMI, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, 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 is arrayed as A.1 in S.C.No.17 of 2016, on the file of the Court of Additional Sessions (Fast Track) Judge, Theni and he along with Lakshmi/ A.2 - wife of the deceased, were prosecuted for the offences under Section 302 r/w 34 I.P.C. and the trial Court, vide the impugned judgment, dated 10.09.2018, found guilty and imposed them with sentence of each to undergo life imprisonment and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for six months. The trial Court has also granted set-off under Section- 428 Cr.P.C. Challenging the legality



of the said conviction and sentence, the petitioner/A.1 preferred the present appeal and pending the appeal, he had filed this petition seeking suspension of the substantive sentences of imprisonment.

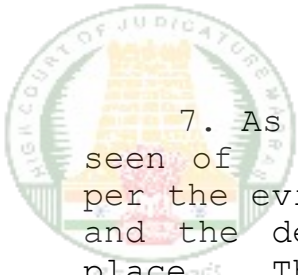
2. Mr.A.Doraisamy, learned Senior Counsel, assisted by Mr.Muthumani Doraisamy, learned Counsel appearing for the petitioner/ A.1, would submit that the case of the prosecution is based on the circumstantial evidence and the deceased was none other than the husband of A.2 and the motive of commission of offence is that A.2 had illicit intimacy with A.1, who is none other than her sister's son. Even according to the case of prosecution, none of the witnesses has directly spoken about the said intimacy and no witness has been spoken about the last seen of the petitioner/A.1 with the company of the deceased. The testimony of P.W.1- uncle of the deceased and A.2 would disclose that A.1 came to the house at 06.00 pm. on 09.06.2015, whereas the occurrence took place in the night hours at 11.00 p.m. and except the arrest and the alleged confession and recovery, no other materials were produced by the prosecution against the petitioner and since the case projected by the prosecution against the petitioner brassily has very many inconsistencies and infirmities, there is a very bright chance of success in the appeal 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 the testimony of P.W.3-daughter of the deceased and A.2, is a clinching evidence and she has spoken about the presence of the petitioner/A.1 in their house at 06.00 pm., on 09.06.2015 and she would further depose that A.2/ mother also told her that if somebody asked about A.1, to state that he was not present and she has also spoken about the fact of the illicit intimacy of her mother with A.1 and coupled with the arrest, recover and confessional evidence, the prosecution was able to prove the guilt beyond any reasonable doubt 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. The testimony of P.W.3 would *prima facie* disclose that A.1 was present in their house and A.1 and A.2 had conversation at about 06.00 p.m. on 09.06.2015 and she and her mother slept inside the house and the deceased slept outside the house and in the cross-examination, she also stated that A.1 used to come to her house only when she and her brother were in the house.

6. À perusal of the testimony of the Investigating Officer, who was examined as P.W.19 would *prima facie* disclose that the mobile phone of A.2 was seized, however, no investigation was done as to the call details and none of the evidence would also speak about the alleged intimacy of A.1 and A.2.



7. As already pointed out, no witness was spoken about the last seen of A.1 found with the company of the deceased and even as per the evidence of P.W.3, she and her mother slept inside the house and the deceased slept outside the house, where the murder took place. The testimony of P.W.19 would *prima facie* disclose that during the investigation, none of the witnesses has spoken about the illicit relationship of A.1 and A.2. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, except the arrest and the alleged confession and recovery, no other materials were produced by the prosecution against the petitioner.

8. This Court, taking into consideration of the above facts and circumstances, is of the considered view that the petitioner/A.1 is entitled for suspension of the substantive sentences of imprisonment pending the appeal.

9. In the result, the petition is allowed and the substantive sentences of imprisonment alone in respect of the petitioner/A.1 is suspended and the petitioner/A.1 is directed to be enlarged on bail on condition that the petitioner/A.1 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, Theni and on further condition that the petitioner/A.1 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, Theni [PRC.No.47/2015] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-

11/07/2019

/ TRUE COPY /

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

TO

- 1.ADDITIONAL DISTRICT (FAST TRACK) JUDGE, THENI.
- 2.THE JUDICIAL MAGISTRATE, THENI.
- 3.THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT
- 4.THE INSPECTOR OF POLICE,
ALLINAGARAM POLICE STATION, THENI.
- 5.THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 6.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to MR.MUTHUMANI DORAISAMI Advocate SR.No.11574

ORDER IN

CRL MP(MD) No.6217 of 2019
IN CRL A(MD) No.454 of 2018
Date :11/07/2019