

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No.2923 of 2020

in Crl. A. No.153 of 2020

Karthi @ Manikandan, male, aged 30 years
S/o.Moorthy
77/1, Co-operative colony
Chithode
Erode District.

... Petitioner/Appellant

Vs

Inspector of Police
Chithode Police Station
Erode District.
Crime No.443/2017

... Respondent/Complainant

PRAYER : Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code praying to suspend the judgment of conviction and sentence dated 13.12.2019 passed by the Court of Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, in S.C.No.37 of 2018 pending disposal of the criminal appeal.

For Petitioner : Mr.G.R.Hari

For Respondent : Mrs. M. Prabhavathi
(Additional Public Prosecutor)

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter is heard through "Video Conferencing".

2.This petition has been filed seeking suspension of sentence in the judgment passed by the trial Court by which the petitioner has been convicted for the offence under Section 302 IPC for life imprisonment for having murdered one Karthika on 06.09.2017, with whom he was having living in relationship. The judgment was passed by the Trial Court on 13.12.2019.

3.Mr.G.R.Hari, learned counsel appearing for the petitioner would submit that the prosecution has not proved that there was an illegal relationship or living in relationship between the petitioner

and the deceased Karthika. The case of the prosecution is entirely based on last scene theory and circumstantial evidence, which has not been proved by any positive evidence. He would point out that even though the occurrence is alleged to have taken place at 6.30 p.m., after three hours only the F.I.R. was given. Even before registration of F.I.R., as per P.W.12's evidence, the petitioner was arrested by 7.00 p.m., whereas according to the prosecution, he was arrested after two days. Therefore, the prosecution case cannot be believed. Secondly, he would submit that the prosecution has not proved that there is illegal relationship or living in relationship between the petitioner and the deceased. There is no eye-witness to the occurrence. Even P.W.12 also did not speak about the involvement of the accused and he has turned hostile. The judgment is not sustainable and hence, he seeks suspension of sentence.

4. However, Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the respondent would submit that P.W.1 and P.W.4 categorically spoke about the living in relationship between the petitioner and the deceased. On the date of occurrence, the deceased who was living with the petitioner made a complaint to her family members about the arrangement of marriage of the petitioner. Based on that, few members of the family along with the deceased came to the cell phone shop of the petitioner and left the deceased in the cell phone shop. Therefore, Section 106 of Indian Evidence Act has come into play. Moreover, the evidence of P.W.1, P.W.4 and P.W.2 categorically spoke about leaving the deceased at the shop of the petitioner. Therefore, based on the evidence, the prosecution clearly proved that petitioner alone murdered the deceased and therefore, she would oppose the suspension of sentence.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the entire records.

6. The case of the prosecution is that Karthika, who is a married lady, came to her parents house along with a female child, after dispute with her husband. Thereafter, she developed illegal relationship with the petitioner, when she visited his cell phone shop often for recharging. Thereafter, the deceased and the petitioner were living together in a separate house. On the date of occurrence, i.e., on 06.09.2017, the deceased came and complained to the family members that the petitioner is arranging for marriage with some other lady. Therefore, the family members along with the deceased came and questioned the petitioner and left the deceased in the shop. In the evening, when they came, the petitioner and the boy who was working in the shop ran away from the shop. When they went into the shop, they found the body of the deceased packed in a gunny bag and there were strangulation marks in the neck. P.W.1 and P.W.4 have categorically stated that they left the deceased in the shop and thereafter, when they visited the shop in the evening, the petitioner ran away from the shop and the body of the deceased was packed in a gunny bag. The prosecution was able to prove through evidence especially P.W.1 and P.W.4 who have categorically stated that the petitioner was having illegal relationship with the deceased and was

living separately in a rented house. Further, P.W.1 and P.W.4 would depose that they left the deceased with the petitioner and in the evening, she was found to be murdered. The circumstantial evidence, especially P.W.1 and P.W.4 would be clinching evidence to prove that the petitioner alone was responsible for the murder, especially when the body was found in the shop and the petitioner and the boy who was working in the shop ran away from the shop.

7.The timing of the F.I.R. and arrest of the accused are the points to be argued at the time of final disposal of the appeal and therefore, there is no arguable points at present for granting suspension of sentence. Therefore, the petition stands dismissed.

-sd/-
12/08/2020

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
MAGALIR NEETHI MANDRAM
FAST TRACK MAHILA COURT], ERODE

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE
CHITHODE POLICE STATION,
ERODE DISTRICT.

C.C. to M/S.C.E.PRATAP Advocate on payment of necessary charges

Order
in
CRL MP.2923/2020

in CrI. A. No.153 of 2020

Date :12/08/2020

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