

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No.6321 of 2020

in Crl.A No.413 of 2020

Kavery

... Petitioner

vs

The State Rep. by
The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.

... Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed by the judgment dated 09.04.2019 passed by the Additional Sessions Judge, Dharmapuri in S.C.No. 148 of 2016.

For Petitioner .. Mr.M.K.Subramanian
for Mr.S.Senthil

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner has been arrayed as the sole accused in S.C.No. 148 of 2016 on the file of Additional Sessions Judge, Dharmapuri. The trial Court by judgment dated 09.04.2019 convicted the petitioner for the offence punishable under Section 302 IPC (2 counts), 304 (II) IPC and 307 IPC. For the offence punishable under Section 302 IPC (2 counts) sentenced him to undergo life imprisonment (two counts) and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment, for the offence punishable under Section 304(II)IPC sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment and for the offence punishable under Section 307 IPC sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo

three months simple imprisonment. The trial Court accordingly convicted him. Pending appeal, the petitioner seeks suspension of sentence rendered on 09.04.2019.

2. The case of the prosecution is that all the deceased are the family members of the petitioner, namely, the father, children and wife. The petitioner was having trouble with various third parties as he was unable to repay the amount after promising to secure jobs. Accordingly, he administered poison and committed the offence.

3. Learned counsel appearing for the petitioner submitted that it is a case of circumstantial evidence. He was not available at the scene of occurrence when the death occurred. The poisoned food was administered by his wife, who took it by herself apart from making her children and father-in-law to take it. There is absolutely no material to implicate the petitioner. Even P.W.8, the deceased daughter has stated that she made a prior statement only as directed by the police. The evidence of P.Ws 3 and 4 ought not to have been accepted by the trial Court since they were emotionally charged and attacked the petitioner fixing the responsibility for the entire occurrence on him towards the conduct and behaviour. Though the case of the prosecution is that the petitioner has been implicated pursuant to the extra judicial confession statement given before the Village Administrative Officer, even the inquest report conducted a day prior would reveal that the petitioner committed the offence. Thus, there is no basis for relying upon the extra judicial confession followed by recovery. The genesis of the poisoning substance has not been established. The petitioner has been under incarceration for more than one and half years, and, therefore, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that due to the offence committed by the petitioner, four members of the family died including his father. The trial Court rightly believed the extra judicial confession. The medical evidence also reveals that the death occurred due to the poisoning. There are sufficient evidence to show that the petitioner was demanding money from his wife and he was having financial trouble. Thus, the petition will have to be dismissed.

5. As stated, it is a case of circumstantial evidence. Not only the wife, children and the father of the petitioner also died. He was not available at the scene of occurrence. It is the deceased wife of the petitioner, who made others to take the food. The source of poison has not been proved and established. P.W.8, does not implicate the petitioner. The statement made by her in the chief examination has not been put to challenge by the prosecution. The evidence of P.Ws 3 and 4 cannot be the sole basis as they will have to be looked into with the other evidence available. Thus, we do find that there are arguable points involved in the appeal apart from the fact that the petitioner has been under incarceration for more than one-and-half years. The question for consideration in the appeal is as to whether it is a case of suicide or homicide. Thus, in the light of the above, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes 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 Additional Sessions Judge, Dharmapuri and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
24/11/2020

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 ADDITIONAL SESSIONS JUDGE
DHARMAPURI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KADATHUR POLICE STATION,
DHARMAPURI DISTRICT.

+1 C.C. to M/S.S.SENTHIL Advocate on payment of necessary charges
SR.No.7794

Order

in
CRL MP.6321/2020

in
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Date :24/11/2020