

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 16945 of 2019

in

Crl. A. No. 710 of 2019

Senthilkumar, (Aged 30) (A-1),
S/o. Sivanaiyan,
6-A- Block, Fire Station Quarters,
Kodithoppu,
Chennai.

... Petitioner/ Appellant

Vs

The State by
Assistant Commissioner of Police,
Flower Bazaar Range, Chennai,
C-3, Seven Hills Police Station,
Chennai.
Crime No. 1015/2015

... Respondent

PRAYER : Criminal Miscellaneous Petition filed under Section 389(1) of
Criminal Procedure Code praying to suspend the sentence imposed on the

petitioner by the judgment dated 09.09.2019 passed in S.C. No. 121/2016 on the file of the Mahila Court/Special Court for cases under POCSO Act/ Children's Court, Chennai, convicting the appellant and sentenced to undergo Life Imprisonment and to pay fine of Rs.5,000/-, in default 6 months S.I. U/s. 302 I.P.C. and enlarge on bail, pending disposal of the above Criminal Appeal No. 710 of 2019.

For Petitioner : Mr. V. Parthiban
for Mr. I.C. Vasudevan

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

ORDER

(Order of the court was made by V.M.VELUMANI.J.,)

The matter was heard through "Video Conferencing".

2. The petitioner was convicted by the learned Sessions Judge, Mahila Court/Special Court for cases under POCSO Act/ Children's Court, Chennai, in S.C. No. 121 of 2016 for the offence punishable under Section 302 IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in

default to pay the fine amount, to undergo simple imprisonment for six months. Aggrieved over the conviction and sentence passed by the learned Sessions Judge, Mahila Court/Special Court for cases under POCSO Act/ Children's Court, Chennai, the petitioner/first accused had filed the appeal in Crl. A. No. 710 of 2019 before this Court. Along with the appeal, he has also filed the present Miscellaneous Application praying for suspension of sentence.

3. The brief facts of the case is that, on 20.11.2015, the petitioner/ first accused, who is the husband of the deceased, murdered his wife by strangulating her neck and pressing her face with pillow due to the quarrel between them with regard to illicit relationship of petitioner/ first accused with the second accused. After murdering, the first accused took all the gold jewels of the deceased, including Thali and their 2 ½ years old daughter with him and absconded along with the second accused.

4. Mr. V. Parthiban, learned counsel appearing for the petitioner/ first accused contended that the learned Judge failed to properly appreciate the evidence on record, when case of the prosecution is based on circumstantial evidence. The

learned Judge is not correct in convicting the petitioner based on the statement of P.W.2 and P.W.3, given before the Revenue Divisional Officer/ P.W.16. The statement given before the Revenue Divisional Officer/ P.W.16 is not substantial evidence and the same can not be accepted. The prosecution failed to prove the motive against the petitioner for murdering his wife and failed to prove the recovery of jewels. The case of the prosecution is based on circumstantial evidence and prosecution failed to prove the chain of circumstances against the petitioner and failed to prove that the petitioner murdered his wife.

5. *Per contra*, Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the respondent contended that prosecution examined the witnesses and proved the charge leveled against the petitioner by circumstantial evidence without any break in chain of circumstances. The petitioner has not made out any case for suspension of sentence and prayed for dismissal of the petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. From the materials on record and the contention of the learned counsel appearing for the petitioner/ first accused, it is seen that various grounds raised by the petitioner for suspension of sentence can be considered and decided only at the time of final hearing of the appeal filed by the petitioner. The petitioner has not made out any case for suspension of sentence.

8. For the above reason, the petition is dismissed.

(N.K.K.,J.)

(V.M.V.,J.)

31 .07.2020

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Index: Yes/No

Internet: Yes/No

To

1.The Assistant Commissioner of Police,
Flower Bazaar Range, Chennai,
C-3, Seven Hills Police Station,
Chennai.

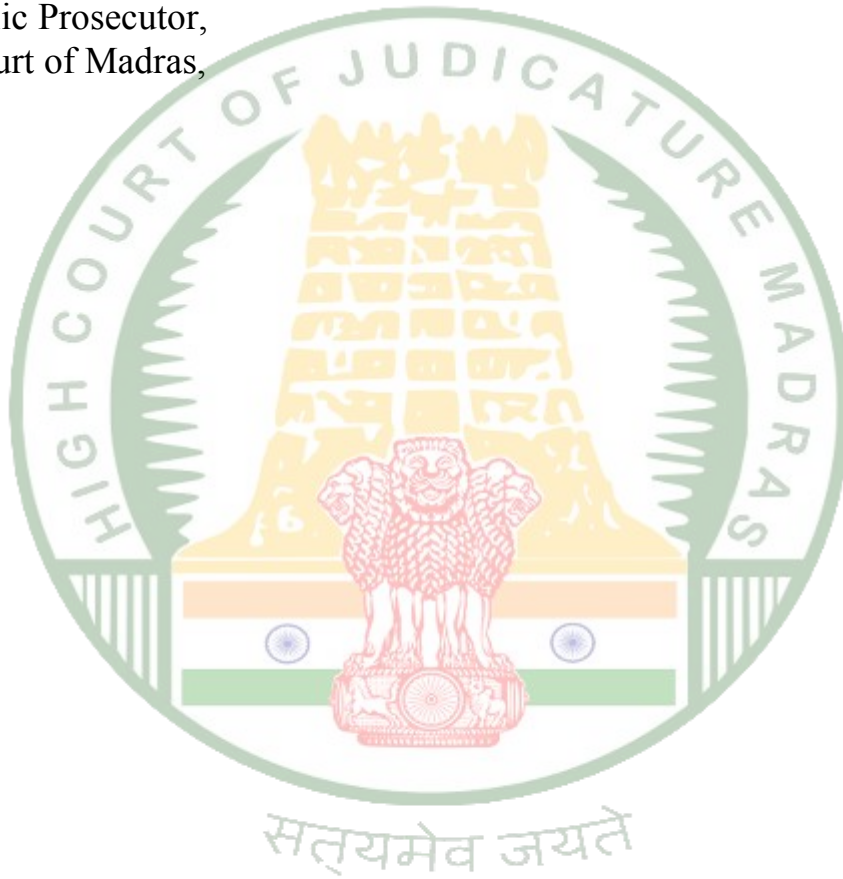
2.The Sessions Judge,
Mahila Court/Special Court for cases under POCSO Act

5/7

/ Children's Court,
Chennai,

3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court of Madras,
Chennai.



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