

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2020

CORAM:

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

Crl. M.P. No. 19081 of 2019
in
Crl. A. No. 911 of 2019

P. Nagaraj ... Appellant/ Accused

Vs.

The State rep. By,
The Inspector of Police,
Erode North Police Station,
Erode District.

... Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of Criminal Procedure Code praying to suspend the sentence imposed in the judgment order passed by the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Erode in S.C. No. 14 of 2018, vide his order dated 22.07.2019, sentencing the appellant to undergo 2 month simple imprisonment for offence U/S 294 (b) IPC and to undergo further simple imprisonment of 1 year for offences U/S 302 IPC and to undergo four months simple imprisonment for offences under 323 IPC and enlarge the petitioner on bail pending disposal of the above criminal appeal before this Court.

For Petitioner : Mr. Deepan Uday

For Respondents : Mrs. M. Prabhavathi
Additional Public Prosecutor

WEB COPY
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 to suspend the sentence imposed on the convict in the judgment in Sessions Case No.14 of 2018 dated 22.07.2019 by which the appellant has been convicted under Section 294 (b), 302 and 323 of I.P.C. for life imprisonment for murdering his wife Seetha on 08.05.2017 in a busy market area.

3. Heard Mr. Deepan Uday, learned counsel appearing on behalf of the petitioner who would submit that the deceased wife was having illegal relationship originally with one Sakthivel. Hence, there was a quarrel between them and subsequently, the issue got settled and they were living together and 3rd child was also born thereafter. The appellant came to know about another illegal relationship of his wife with one Babu, relative of the appellant and thereafter, they got separated by conventional method without approaching the Court and they have been living separately.

4. It is alleged that on 08.05.2017, the petitioner/appellant is said to have assaulted the deceased when she went along with her mother P.W.1 for purchase. P.W.1 alone is the eye-witness who spoke about the murder by the appellant. P.W.2 to P.W.4 examined by the prosecution turned hostile. P.W.13 is the brother of the deceased who was not an eye-witness. The Court relied upon the evidence of P.W.1 and the evidence of P.W.13- brother of the deceased, who was not present in the scene of the occurrence and P.W.18, the Investigating Officer and convicted the accused. The only witness who spoke about the incident was P.W.1 who is the mother of the deceased. But, she is an interested witness and her evidence cannot be relied upon. In the absence of any evidence, there is no other evidence to pin point the alleged murder committed by the appellant. P.W.2 to P.W.4 have already turned hostile and therefore, that would not help the prosecution case. P.W.18 is the Investigating Officer. Therefore, the learned counsel for the petitioner would submit that the judgment solely depends upon P.W.1's evidence and the same is not sustainable. Moreover, he would point out that there are three children who are left as orphans and they should be taken care.

5. However, the same has been opposed by Mrs. M. Prabhavathi, learned Additional Public Prosecutor.

6. Heard the parties and perused the records.

7. The prosecution case is that the separated husband got wild as his wife was having illegal relationship originally with Sakthivel and thereafter with Babu. Therefore, he followed the victim who along with her mother, went to the Bazaar to purchase and in the day light, she was murdered by the appellant. Though she is the sole eye-witness and she clearly spoke about the murder committed by the appellant, it is a day light murder and that cannot be taken lightly. Though this Court has got sympathy for the children who had been deprived of the father's care and mother's love, that cannot be made use of by the appellant for the purpose for suspending the sentence.

In the result, this petition is dismissed.

-sd/-
20/08/2020

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 JUDGE, SESSIONS COURT,
MAGALIR NEETHI MANDRAM,
(FAST TRACK MAHILA COURT),
ERODE.

2 THE SUPERINTENDENT,
CENTRAL JAIL, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

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

Order

in
CRL.MP.NO.19081/2019

in
CRL.A.NO.911/2019

Date :20/08/2020

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MK:03/09/2020