



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

Wednesday, the Twentieth day of January Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP (MD) No.5092 of 2020
IN
CRL A (MD) No.539 of 2019

SATHISHKUMAR ... PETITIONER/APPELLANT (SOLE ACCUSED)

Vs

STATE THROUGH,
THE INSPECTOR OF POLICE,
(*)ABIRAMAM POLICE STATION,
RAMANATHAPURAM DISTRICT.
IN CRIME NO.6 OF 2012

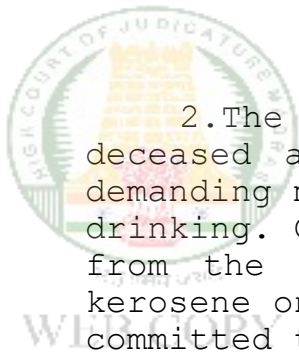
... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the substantive sentence rendered in Sessions Case No.93 of 2012 on the file of the Learned Fast Track Court-Special Sessions Court for Mahila Cases, Ramanathapuram by order dated 06/09/2019 and enlarge the Petitioner/Appellant on bail, pending disposal of the Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.N.ANANTHAPADMANABHAN, for M/S.APN LAW ASSOCIATES, Advocate for the petitioner and of MR.R.ANADHARAJ, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

(Order of the Court was made by G.ILANGO VAN, J)

This Criminal Miscellaneous Petition is filed to suspend the substantive sentence passed by the Fast Tract Court-Special Sessions Court for Mahila Cases, Ramanathapuram, in SC No.93 of 2012, dated 06.09.2019 and enlarge the petitioner/Appellant on bail pending disposal of the criminal appeal.



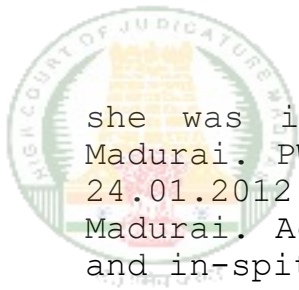
2.The case of the prosecution is that the accused and the deceased are husband and wife. The accused was in the habit of demanding money from the deceased to meet out his expenses of liquor drinking. On 24.01.2012 at about 6.00 pm, the accused demanded money from the deceased and on her refusal, he got angry and poured kerosene on the body of the deceased and set her ablaze and thereby, committed the offence under section 302 IPC.

3.To prove the charge, the prosecution examined 24 witnesses and marked 14 documents as well as 2 material objects. On the side of the accused, no witness was examined and no document was marked.

4.The trial court, after considering the materials available on records, came to the conclusion that the charge framed against the accused has been proved beyond all reasonable doubt and convicted and sentenced him to undergo life imprisonment with a fine of Rs.3,000/-, in default to undergo 3 months simple imprisonment. Challenging the conviction and sentence of the trial court, the appeal has been preferred by the petitioner and along with the appeal, seeking suspension of sentence, this criminal miscellaneous petition is filed.

5.The earlier application filed in Crl.MP(MD)No.9861 of 2019 was withdrawn by the petitioner, on 12.12.2019 and subsequent to that, this petition came to be filed.

6.At the time of argument, it is contended on behalf of the petitioner that the trial court heavily relied upon the alleged dying declaration alleged to have been given by the deceased to PW14, the concerned Judicial Officer. The child of the deceased and the accused namely PW15 did not support the case of the prosecution and turned hostile. According to the learned counsel appearing for the petitioner, the alleged dying declaration is doubtful, since there are contradictions with regard to the conscious state of mind of the deceased when she was admitted in the hospital. PW14 the Judicial Magistrate rushed to the Government Rajaji Hospital, Madurai, on receipt of the intimation, on 24.01.2012 and according to his evidence, the deceased was identified by the Duty Doctor. After ascertaining the conscious state of mind of the deceased with the duty doctor, he recorded her statement at 12.00 midnight on the date. According to the evidence of PW1, the father of the deceased received the information about the occurrence on 24.01.2012 at about 6.00 pm and went to the Government Hospital, Kamuthi, where the deceased was admitted and on his enquiry, she revealed the occurrence connecting the accused with burn injuries. The Doctor, who admitted the deceased in the Kamuthi Government Hospital was examined as PW17 would state that on 24.01.2012 at about 8.25 pm, PW1 the father of the deceased admitted the deceased in the hospital, informing that the accused set the deceased on fire by pouring kerosene and when she was admitted in the hospital, she was conscious and in a state of mind and sustained 90% of burn injuries and



she was immediately referred to the Rajaji Government Hospital, Madurai. PW22 was the Medical Officer, who admitted the deceased on 24.01.2012 at about 11.10 PM in the Rajaji Government Hospital, Madurai. According to him, the deceased suffered 100% burn injuries and in spite of that, she was conscious.

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7. PW23 is the Medical Officer, who was on duty on 24.01.2012 in the Emergency Ward and according to him, only he certified the conscious state of mind of the deceased and PW14, the judicial Magistrate recorded the dying declaration of the deceased. Further, it is contended on behalf of the petitioner that Ex.P1 alleged to have been recorded by PW20 the then Sub Inspector of Police attached to Abiramapuram Police Station and according to her, on intimation from the Government Hospital, Kamuthi, she visited the hospital on 24.01.2012 at 9.00 pm and recorded the statement of the injured (now deceased) and on that basis, the case in Crime No.6 of 2012 under section 307 IPC was registered. But according to PW17, the deceased was not conscious at the time of admission as mentioned earlier.

8. The learned counsel appearing for the petitioner took us through these evidence and would contend that there are material contradictions with regard to the conscious state of mind of the deceased at the time of admission, both at the Kamuthi Government Hospital and the Rajaji Government Hospital, Madurai. So he would contend that since the trustworthiness of dying declaration and Ex.P1 complaint are doubtful and serious dispute is raised by the petitioner, he is entitled for suspension of sentence.

9. It is submitted by the learned Additional Public Prosecutor appearing for the respondent/State that the trial court has rightly convicted the petitioners and there are enough materials available on record against the petitioner and there is no infirmity in the prosecution case and prays for dismissal of this petition.

10. We had the benefit of interaction with PW15, the child of the accused and the deceased. From that conversation, it came to know that she is comfortable with her paternal grand parents.

11. In the light of the above submissions made by the learned counsel appearing for the petitioner, we are of the considered view that there are arguable points involved in this case and it may not be possible for the criminal appeal to be taken up for hearing at the earliest point of time, So, we are inclined to grant suspension of sentence to the petitioner with certain conditions.

12. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- **(Rupees Ten Thousand only)** with two sureties each for a like sum to



court and on further condition that the petitioner shall appear before the said court daily at 10.30 am pending appeal.

sd/-
20/01/2021

**(*)Amended as per order of this Court
dated 16.02.2021 in CRL.MP(MD)No.1276/2021
in CRL A(MD)No.539 of 2019 by MKKSJ AND GIJ.
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/ /2021

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

(*)To be substituted with the order dated 20/01/2021 already despatched

- 1.THE JUDGE, FAST TRACK COURT,
SPECIAL SESSIONS COURT FOR MAHILA CASES, RAMANATHAPURAM
- 2.THE JUDICIAL MAGISTRATE, KAMUTHI,
RAMANATHAPURAM DISTRICT
- 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, RAMANATHAPURAM.
- 4.THE SUPERINTENDENT, CENTRAL PRISON, MADURAI
- 5.THE INSPECTOR OF POLICE,
KAMUDHI POLICE STATION, RAMNAD DISTRICT.
- 6.THE INSPECTOR OF POLICE,
ABIRAMAM POLICE STATION, RAMANATHAPURAM DISTRICT.
- 7.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.APN LAW ASSOCIATES Advocate SR.No.1055

ORDER IN
CRL MP(MD) No.5092 of 2020
IN
CRL A(MD) No.539 of 2019
Date :20/01/2021

DASS
PK/SMA/SAR-III/21.01.2021 : 4P/7C
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TK/PN/SAR.1/19.02.2021/4P/9C