



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

Thursday, the Tenth day of December Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.6141 of 2020
IN
CRL A(MD) No.340 of 2020

EASKKIMUTHU @ MUTHU

... APPELLANT/ACCUSED NO.1

Vs

STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
AMBASAMUDRAM SUB DIVISON,
KALLIDAIKURICHI POLICE STATION,
TIRUNELVELI DISTRICT.
(IN CRIME NO.344 OF 2011)

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence and release petitioner on bail pending disposal of this Criminal Appeal before this Honourable Court against the judgment in S.C.NO.51 of 2013 on the file of the Honourable II Additional District and Sessions Judge, Tirunelveli dated 18.12.2015.

Prayer in CRL A(MD) No.340 of 2020:

To suspend the sentence and release Petitioner on bail pending disposal of this criminal Appeal before this Hon`ble Court against the judgment in S.C.No.51 of 2013 on the file of the Hon`ble II Additional District and Sessions Judge, Tirunelveli dated 18.12.2015 and set aside the conviction and sentence imposed against the appellant.



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.R.ALAGUMANI, Advocate for the petitioner and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The appellant/Esakkimuthu @ Muthu and one Karthikeya @ Karthick were tried by the II Additional District and Sessions Judge, Tirunelveli for the charges under Section 449, 302, 363, 366, 342, 386 and 380 of IPC and Section 3(2)(V) of SC/ST Act(POA) and held the appellant guilty and convicted him under Section 449, 302, 363 and 342 IPC and sentenced him to undergo rigorous imprisonment for two years under Section 449 of IPC and to pay a fine of Rs.1000/- and in default, to undergo one month simple imprisonment; life imprisonment under Section 302 IPC and to pay a fine of Rs. 1000/- and in default to undergo three months simple imprisonment; three years rigorous imprisonment under Section 363 of IPC and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment; rigorous imprisonment of three months under Section 342 IPC and to pay a fine of Rs.200/- in S.C.No.51 of 2013 vide judgment, dated 18.12.2013, which is assailed in the present Appeal. The second accused Karthikeya @ Karthick was acquitted from all the charges.

2.The case of the prosecution is that P.W.1 Jamuna is the daughter of deceased Annalakshmi. The accused and the deceased are neighbours. It is alleged that the deceased had occupied a portion of the land in S.No.158 of 2010 by putting up fence which was objected to by the first accused. In this regard, there was a dispute between the deceased and A1. While so, on 16.8.2011 at 2.00 a.m., the accused A1 trespassed into the house of the deceased Annalakshmi and strangled her neck with the skirt tap and the said incident was witnessed by her daughter P.W.1-Jamuna. It is the further case of the prosecution that the accused kidnapped P.W.1 Jamuna to a place A.C.parai, where, he compelled her to marry him in order to conceal the incident of murder. It is the further case of the prosecution that the first accused obtained the ear-sted of P.W.1 and then contacted A2-Karthkeya @ Karthick through phone to purchase Thali. In the meantime, P.W.1 said to have escaped from the place and lodged a complaint to P.W.15.

3.The prosecution cited P.W.1 as the sole eyewitness to the occurrence and also relied on other evidence to prove the motive, arrest and recovery of the weapons. The trial Court mainly relying on the evidence of P.W.1, convicted the first accused, the appellant herein while acquitting the second respondent as stated supra.



4.Mr.R.Alagumani, learned counsel appearing for the Petitioner would submit that the prosecution has not come to the Court with clean hands and the earlier complaint given by P.W.1 has been suppressed by the prosecution. According to the prosecution, the accused was arrested on 17.8.2011, but, P.W.1 herself admitted in the cross examination that on 16.8.2011, when she went to the Police Station to lodge the complaint, she found both the accused in the Police Station and hence, the entire case of the prosecution is false and the accused have been falsely roped in this case.

5.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor would submit that though P.W.1 is the sole eyewitness in this case, during cross examination, nothing has been elicited to shake her evidence and the testimony of P.W.1 is intact and hence there is no infirmity in the finding of the trial Court. It is also contended that the trial Court itself had disbelieved the arrest and recovery of the weapons and on that account, A2 was acquitted but A1 was rightly convicted by the trial Court and hence prayed for dismissal of the Petition.

6.In the matter on hand, the cause of occurrence as per prosecution story is the land dispute. However, except P.W.1, nothing could be brought on record to establish the motive. Further, it is the case of the prosecution that on 16.08.2011 at 2.00 a.m., the occurrence is said to have been taken place and the same was witnessed by P.W.1. But the complaint was given at 9.00 a.m.The evidence of P.W.1 that she was kidnapped at knife point by A1 and she was kept in illegal custody from 2.00 a.m to 7.00 a.m and she took her belongings as directed and accompanied the first accused, appears to be artificial. It is informed that from the date of arrest i.e., on 18.12.2015, the Petitioner has been in incarceration for about five years.

7.Considering the above aspects, we are of the opinion that the accused is entitled for suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood-related surety, each for a like sum to the satisfaction of the Judicial Magistrate, Ambasamudram.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioner shall appear before the learned

Judicial Magistrate Ambasamudram, at 10.30 a.m. on the



first working day of every English Calendar month until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
10/12/2020

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/ /2020

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

- 1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUNELVELI.
- 2 THE JUDICIAL MAGISTRATE,
AMBASAMUDRAM.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI.
- 4 THE DEPUTY SUPERINTENDENT OF POLICE,
AMBASAMUDRAM SUB DIVISION,
KALLIDAIKURICHI POLICE STATION,
TIRUNELVELI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.6141 of 2020
IN
CRL A(MD) No.340 of 2020
Date :10/12/2020

VSN
JM/PN/SAR IV/16.12.2020/4P/7C

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