



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

Thursday, the Eighth day of October Two Thousand Twenty

PRESENT

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

CRL MP(MD) No.4272 of 2020
IN
CRL A(MD) No.273 of 2020

SAMINATHAN @ KAMARAJ ... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
SATTUR TOWN POLICE STATION,
IN CRIME NO.387 OF 2014,
VIRUDHUNAGAR DISTRICT. ... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on the petitioner/Appellant/Accused in S.C.No.38 of 2016 on the file of the learned Mahila Court (Fast Track Court) Virudhunagar at Srivilliputhur vide Judgment dated 31.12.2020 and enlarge him on bail pending disposal of the appeal.

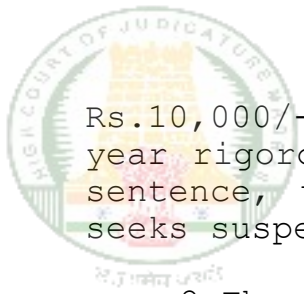
Prayer in CRL A(MD) No.273 of 2020:

To call for the records and set aside the order of conviction and sentence passed in S.C.No.38 of 2016 dated 31.12.2020 on the file of the learned Mahila Court (Fast Track Court) Virudhunagar at Srivilliputhur and allow this appeal and acquit the Appellant/Accused from the charge leveled against him.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.AK.AZAGARSAMI, Advocate for the petitioner and of MR.M.CHANDRASEKARAN, 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 sole accused in S.C.No.38 of 2016, on the file of Mahila Court(Fast Track Court), Virudhunagar at Srivilliputhur was tried and convicted for the offence under Section 302 of IPC and sentenced to life imprisonment and imposed with a fine of

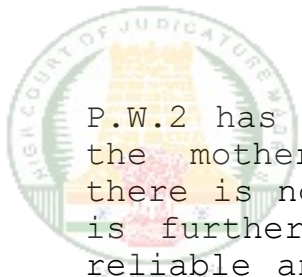


Rs.10,000/- in default of payment, further to undergo further one year rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2.The case of the prosecution is that the deceased Thayammal was married to one Duraipandi in the year 1992 and out of their lawful wedlock, they begotten a son and a daughter. It is the further case of the prosecution that they lived together only for four years and thereafter, they got separated. During the time, the accused developed intimacy with the said Thayammal and they are living together as husband and wife for about six years. However, suspecting the fidelity of the said Thayammal, he was picking up quarrel with her. In pursuance thereon, on 22.7.2020, when the accused and the deceased were sleeping during the night hours, the accused said to have attacked the deceased initially with his legs and thereafter, cut the deceased with aruval and thereby she died. The trial Court, accepting the case of the prosecution, convicted the accused, as stated supra.

3.The learned counsel for the Petitioner would submit that the prosecution had examined P.W.1 and 2 as eyewitness to the occurrence, but their presence at the time of occurrence is highly doubtful. In support of the above contention, the learned counsel for the Petitioner has drawn the attention of this Court to the evidence of P.W.1 and P.W.2. The learned counsel further submitted that there are vital discrepancies in the evidence of P.W.1 and P.W.2 with regard to the lodging of complaint with the respondent Police. According to the learned counsel, P.W.1 has deposed that she lodged a complaint Ex.P1 to P.W.14 at about 8.00 a.m., but during the cross examination, she admitted that even at 7.00 a.m., the Police were present and she gave the complaint. P.W.2 also admits in her evidence that even at 4.30 a.m., the Police were found in the place of occurrence. It is further contended that the occurrence might have taken place due to the sudden provocation and there is no material to show that the accused had an intention to kill the deceased. It is the submission of the learned counsel for the Petitioner that there are arguable points in favour of the Petitioner and the appeal is also not likely to be taken up for final disposal in the near future.

4.Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondent would vehemently oppose the application by contending that the deceased was admittedly a divorcee and knowing all these facts, the accused had developed illegal intimacy with her and lived with her for about 7 years. The learned Additional Public Prosecutor would further add that even though it is admitted by P.W.1 and P.W.2 that P.W.1 is residing four houses away from the house of the deceased, but it has been admitted in the evidence that they can hear the quarrel ensued between the deceased and the accused at the time of occurrence.



P.W.2 has stated that only for taking treatment, she had come to the mother's house and she had witnessed the occurrence. Therefore, there is no reason to disbelieve the evidence of P.W.1 and P.W.2. It is further submitted that the evidence of P.W.1 and P.W.2 was reliable and cogent and the learned Trial Judge had rightly found that the accused guilty, accepting the evidence of P.W.1 and P.W.2. Even with regard to lodging of the complaint to P.W.14 and there is no ambiguity so as to discard the ocular evidence and prays for the dismissal of the Petition.

5. In the matter on hand, according to the prosecution, the accused was living with the deceased Thayammal for about seven years and that suspecting her fidelity and addiction to alcohol, the accused said to have inflicted cut injuries on the deceased at 4.00 a.m., on 23.7.2014. The occurrence is said to have been witnessed by P.W.1 and P.W.2. After going through the evidence of P.W.1 and P.W.2, we are of the opinion that their presence in the scene of occurrence is highly doubtful. There are material contradictions in the evidence of P.W.1 and P.W.2 with regard to the lodging of the complaint. As rightly pointed out by the learned counsel for the Petitioner, P.W.14 has stated before the Court that at 8.00 a.m., on 23.7.2014, he received the complaint from P.W.1 and registered the case in Crime Number.387 of 2014, but P.W.1 and P.W.2 have admitted during the cross examination that the Police was present in the scene of occurrence even before the registration of the case.

6. Considering the above aspects, we are of the view 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 his 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 No.II, Sattur.

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 No.II, Sattur 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

