



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

Thursday, the Eighteenth day of February 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.708 of 2021
in Crl.A.(MD) No.217 of 2020

S.ANBARASAN

... PETITIONER/ APPELLANT

- Vs -

STATE REP.BY
THE INSPECTOR OF POLICE
VANGAL POLICE STATION, KARUR DISTRICT.
CRIME NO.276/2018.

... 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 sentence imposed on the Petitioner vide judgment in S.C No.9 of 2019 dated 21.02.2020 on the file of the Additional Sessions Judge/Fast Track (Mahila) Court, Karur pending disposal of the above Criminal Appeal (MD) No.217 of 2020.

PRAYER IN Crl.A.(MD) No.217 of 2020:

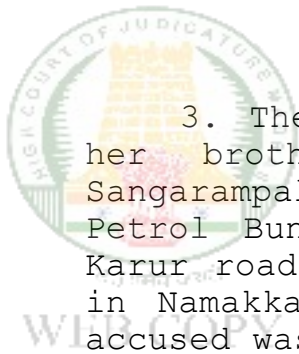
To call for the records relating to the judgment dated 21.02.2020 made in S.C.No.9 of 2019 on the file of the Additional Sessions Judge/Fast Track (Mahila) Court, Karur and set aside the same.

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.T.ANTONY ARULRAJ, Advocate for the petitioner and of Mr.R.ANANDHARAJ, 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.9 of 2019 on the file of the Additional Sessions Judge/Fast Track (Mahila) Court, Karur, was charged for the offence punishable under Section 302 of IPC and he was convicted and sentenced to Life Imprisonment and also imposed a fine of Rs.1,000/- in default to undergo three months simple imprisonment.

2. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, this application to suspend the sentence of imprisonment has been filed.

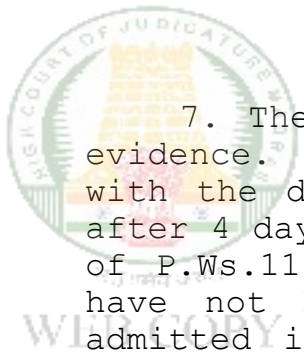


3. The case of the prosecution is that the deceased Baby and her brother Bharathiyar were living with her parents at Sangarampalayam, Karur District. The deceased was working in a Petrol Bunk at Thanneerpanthalpalayam, which situates at Vangal-Karur road and thereafter, she was employed in a Bakery at Mohanur in Namakkal District. The story of the prosecution is that the accused was working as conductor in a private bus, which was plying between Karur and Vangal route. During that time, the accused had love affair with the deceased and by promising to marry her, had physical relationship. When the deceased was insisting the accused to marry her, he decided to eliminate her. In pursuance thereof, on 12.09.2018 he took the deceased to a place called Papular Mudhaliar Vaikkal at Keelachakkarapalayam, attacked her with a stone on her head and immersed the deceased by pressing her neck, thereby caused her death.

4. Mr. T. Antony Arul Raj, learned counsel appearing for the petitioner would argue that there is no eye witness to the incident and the prosecution relied on only circumstantial evidence to establish the charges against the accused but the circumstances relied on by the prosecution have not been proved, hence conviction is unsustainable in law. P.Ws.2 & 3 were examined to prove the last scene theory, but both the witnesses are untrustworthy and unbelievable. It is the submission of the learned counsel for the petitioner that they said to have seen the accused with deceased on 12.09.2018, but they did not prefer any complaint and they were examined after 4 days from the date of occurrence, for which, there is no explanation given by the prosecution. It is also submitted that the prosecution relies on the testimony of P.W.11 & 15, who are the Nodal Officer of Vodaphone and Bharathi Airtel Limited. Though they deposed that the accused spoke to the deceased 12 times on 11.09.2018 and 5 times on the date of occurrence, admittedly, the other call details were not taken into consideration. It has been admitted by the Investigating Officer, P.W.19. The learned counsel for the petitioner drew the attention of the Court the evidences of witnesses referred supra.

5. Per contra, Mr. R. Anandharaj, learned Additional Public Prosecutor submitted that it is true that the prosecution relies on the circumstantial evidence, but there is no reason to disbelieve their evidence. P.Ws.2 & 3 have categorically deposed that they saw the accused along with deceased on 12.09.2018 and after the occurrence, the accused alone was leaving from the scene of occurrence. According to the learned Additional Public Prosecutor, the prosecution has categorically proved the charges against the accused beyond reasonable doubt and hence, he is not entitled for suspension of sentence.

6. We have heard both sides and perused the materials available on record.



7. The prosecution in this case relied on only circumstantial evidence. P.Ws.2 & 3, who are said to have seen the accused along with the deceased on 12.09.2018, were examined by the police only after 4 days from the date of occurrence. That apart, the testimony of P.Ws.11,15 & 19 shows that other call details of the deceased have not been placed before the Court. More over, P.W.2 has admitted in the cross-examination that his wife has gone to the house of the deceased to complain that she was having illicit relationship with her husband. The Medical Certificate relating to the accused produced by the learned Additional Public Prosecutor, dated 17.02.2021 shows that he has been suffering from fever and stomach pain for the past 4 ½ months and a date has been fixed for taking scan to find out the reason for his ailment.

8. In the light of the above fact, we are inclined to grant an order in favour of the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner 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 Additional Sessions Judge/Fast Track (Mahila) Court, Karur.

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.

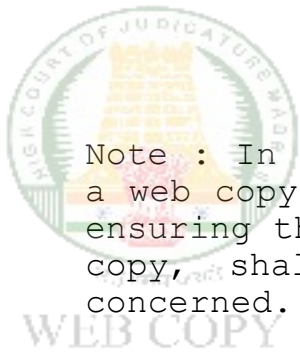
iii. The petitioner shall report before the Additional Sessions Judge/Fast Track (Mahila) Court, Karur on all working days at 10.30 a.m., until further orders.

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 said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

sd/-
18/02/2021

/ TRUE COPY /

/ /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

- 1 THE ADDITIONAL SESSIONS JUDGE/
FAST TRACK (MAHILA) COURT, KARUR.
- 2 THE SUPERINTENDENT, CENTRAL PRISON,
TRICHY.
- 3 THE INSPECTOR OF POLICE
VANGAL POLICE STATION, KARUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-1220[I] dated 19/02/2021)

ORDER

IN

CRL MP(MD) No.708 of 2021 in
Crl.A.(MD) No.217 of 2020

Date :18/02/2021

AM

MS/VR/SAR-4/26.02.2021/4P.6C