



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

Friday, the Fifth day of March 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.1096 of 2021
in
CRL.A (MD) NO.176 OF 2020

SURESH ... PETITIONER/APPELLANT/SOLE ACCUSED
Vs

THE INSPECTOR OF POLICE
SIVAKASI TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME.NO.33 OF 2015)

... RESPONDENT/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 sentences passed in SC.No.109 of 2015 dated 12.12.2019 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Srivilliputhur pending disposal of the above said Criminal Appeal.

Prayer in CRL.A(MD)NO.176 OF 2020:

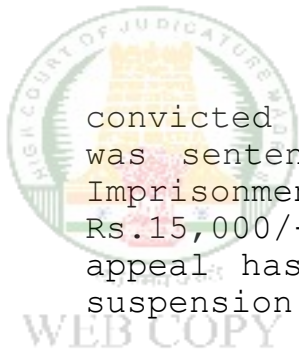
pleased to admit this appeal on file, to call for the records from the Lower Court and duly set aside the judgment passed by the learned Sessions Judge(Fast Track Mahila Court) Srivilliputhur, in S.C.No.109/2015 dated 12.12.2019.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.BANUMATHY, Advocate for the petitioner and of MR.R.ANANDHARAJ, Additional Public Prosecutor, on behalf of the Respondent the court made the following order:-

O R D E R

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

The sole accused, in S.C.No.109 of 2015 on the file of the Sessions Judge (Fast Track Mahila Court), Srivilliputhur, was charged for the offences punishable under Sections 498(A), 302 and 201 of IPC. Though, he was acquitted under Section 498(A), but was



convicted for the offence under Section 302 and 201 of IPC and he was sentenced to undergo Life Imprisonment and 5 years Rigorous Imprisonment respectively. He was also imposed a fine of Rs.15,000/-. Challenging the conviction and sentence, the present appeal has been filed by the accused. Pending appeal, he seeks suspension of sentence.

2. The case of the prosecution is that the deceased was married to the accused about 10 years prior to the occurrence and they have begotten two girl children during the lawful wedlock. Even though, the accused was originally working in a Press, subsequently, he was not going to any job and demanded money from his wife, the deceased, for consuming liquor. It is also the case of the prosecution that the deceased was working in a sweet stall at Sivakasi and the accused, having suspected that she developed illicit relationship with somebody, tortured her. While so, on 15.01.2015 both had gone to her elder sister's house and left their two children in her house and on 17.01.2015 when the deceased had come to her house for having lunch, a wordy quarrel arose between the accused and the deceased and thereafter, he strangulated the deceased with Thali Rope and thereby, caused her death. However, to conceal the murder, he purchased poison from a nearby shop to show as if she died by consuming poison and hence, he was charged for the offences punishable under Sections 498(A), 302 and 201 of IPC.

3. The learned counsel appearing for the petitioner would argue that there are material contradictions in the evidence of prosecution witnesses. It is also contended that the prosecution has failed to examine the independent witness to prove the charge against the accused and the prosecution witnesses are close friends and relatives of the deceased. He further added that the occurrence is said to have taken place on 17.01.2015 at 01.00 p.m., and the same was immediately informed by P.W.8 to P.W.1, who is the brother of the deceased, but he has chosen to lodge a complaint at 10.00 p.m., after a lapse of 9 hours and the express FIR reached to the Court only at 6.30 a.m., on 18.01.2015. According to the learned counsel for the petitioner, the delay in lodging the FIR and reaching the FIR to the Court has not been explained by the prosecution. Further more according to P.W.9, the deceased remained unconscious from the time she admitted in the hospital till her death. But P.Ws.2 & 3 brother and mother of the deceased have deposed in their evidence that the deceased spoke to them and informed that she did not consume poison, which shows that they are giving false evidence in this case.

4. The learned counsel for the petitioner would submit that there are material contradictions in the evidence of P.W.9 and P.W.15. While P.W.9 shows that after seeing the impression on the neck of the deceased, he immediately, informed the police. But the investigating officer says no such message was sent to him. In the light of the above contradictions, according to the learned counsel for the petitioner, he is entitled for suspension of sentence.



5. The learned Additional Public Prosecutor appearing for the respondents vehemently opposed the petition contending that admittedly, the petitioner is the husband of the deceased and the prosecution proved that the deceased died due to strangulation, but no explanation has been offered by the petitioner for her death. It is submitted that earlier application came to be dismissed only on 06.08.2020 and there is no change of circumstances for considering the application now.

6. Heard the rival submissions made by both sides and perused the materials available on record.

7. It is true that the earlier application of the petitioner was dismissed on 06.08.2020. It is the submission of the learned counsel for the petitioner that the material contradictions in the evidence of prosecution witnesses was not brought to the notice of this Court, when the earlier application was heard and the petitioner has now filed additional typed set containing the evidence of prosecution witnesses. It is also stated that the petitioner is having two female children and now, they are being taken care by the grand-mother. The petitioner is ready to pay the maintenance amount to them for their education and their welfare.

8. In the light of the contradictions pointed out by the learned counsel for the petitioner, we are of the opinion that the petitioner 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 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, each for a like-sum to the satisfaction of the learned Sessions Judge (Fast Track Mahila Court), Srivilliputhur.
- ii. The petitioner shall appear before the learned Sessions Judge (Fast Track Mahila Court) Srivilliputhur daily at 10.30 a.m, until further orders.
- iii. 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 Sessions Judge (Fast Track Mahila Court) Srivilliputhur on any other day, as determined by the said Court, in lieu of the day on which he would absent.

sd/-
05/03/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



- TO
- 1 THE SESSIONS JUDGE,
(FAST TRACK MAHILA COURT) ,
SRIVILLIPUTHUR
 - 2 THE INSPECTOR OF POLICE
SIVAKASI TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
 - 3 THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.1096 of 2021
IN
CRL.A (MD) NO.176 OF 2020
Date :05/03/2021

NR/PN/SAR-IV(11.03.2021) 4P:5C