



WEB COPY

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

Reserved on : 21.04.2021

Delivered on : 03.06.2021

PRESENT

The Hon'ble Mr.Justice K.KALYANASUNDARAM
and
The Hon'ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.1037 of 2021
IN
CRL A(MD) No.61 of 2021

GANDHIMATHI

... APPELLANT/SINGLE ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE
TIRUNELVELI TOWN POLICE STATION,
TIRUNELVELI CITY.
CRIME No.155/2019

... 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 passed in S.C.No.375 of 2019 dated 16/12/2020 on the file of the learned 4th Additional District and Sessions Court, Tirunelveli enlarge the petitioner /Single Accused on bail pending disposal of the above appeal.

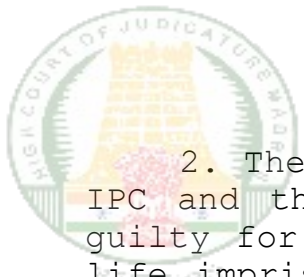
Prayer in CRL A(MD) No.61 of 2021:

To call for the records in S.C.No.375 of 2020 dated 16.12.2020 on the file of learned 4th Additional District and Sessions Court, Tirunelveli set aside the Judgment, Acquit the Appellant/Single Accused herein.

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.MOHIDEEN BASHA, Advocate for the petitioner and of Mr.S.CHANDRA SEKAR, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

[Order of the Court was made by B.PUGALENDHI, J.]

The petitioner has filed this miscellaneous petition seeking to suspend the sentence imposed upon her by the learned IV Additional District and Sessions Judge, Tirunelveli, in S.C.No.375 of 2019, dated 16.12.2020.



2. The petitioner was charged for the offence under Section 302 IPC and the trial Court, by judgment dated 16.12.2020, found her guilty for the said charge, convicted and sentenced her to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for three years. As against the judgment of conviction and sentence, the petitioner has preferred an appeal before this Court in Crl.A.(MD)No.61 of 2021, which has already been admitted. Pending the appeal, the petitioner has moved this application seeking suspension of sentence.

3. Mr.N.Mohideen Basha, learned Counsel appearing for the petitioner submitted that the petitioner is the wife of the deceased and the deceased, a drunkard, used to give sex torture to the petitioner. In fact, the prosecution case is that the deceased, in an inebriated mood, have abused and gave sex torture to the petitioner and the petitioner, enraged by the act of the deceased, in a fit of anger, caught hold of his hair and banged his head in the floor and also strangulated his neck. But, there is no eye witness to the occurrence and the case rests on an extra judicial confession statement. This extra judicial confession statement is also alleged to be given before a different Village Administrative Officer, instead of the concerned Village Administrative Officer of that area and there is no signature of the accused in the said confession statement.

4. The learned Counsel further submitted that the prosecution has not produced any eye witness to the occurrence, though the children of the petitioner are very much available in the house. Most of the prosecution witnesses have turned hostile. The police has visited the place of occurrence even before the recording of the extra judicial confession statement. The Village Administrative Officer, who recorded the confession statement, has stated that he has not visited the place of occurrence and has not witnessed the dead body, which is contra to the statement recorded in Ex.P1.

5. Per contra, Mr.S.Chandra Sekar, learned Additional Public Prosecutor submitted that the petitioner is the wife of the deceased and the deceased was found died in the house with injuries. Therefore, even when there is no eye witness, the petitioner is found guilty as per Section 116 of the of the Indian Evidence Act. He further submitted that the trial Court has convicted the accused only on 16.12.2020 and that not even six months period is over.

6. Heard the learned Counsel appearing on either side and perused the documents placed on record.

7. The petitioner is the wife of the deceased and even according to the prosecution case, the deceased is a drunkard and used to abuse his wife / the petitioner and used to give sex torture under the influence of alcohol. It is the case of the prosecution that even on the occurrence date, there was a quarrel between the



petitioner and her husband / the deceased and in consequence of the quarrel, the petitioner is said to have banged the deceased's head on the floor and also strangulated his neck. As rightly contended by the learned Counsel appearing for the petitioner, though the children are very much available in the house at the time of occurrence, the children were not cited as witnesses. Most of the witnesses have turned hostile and the quarrel said to have been taken place prior to the occurrence has not been stated by any other witness.

8. Apart from this, the learned Counsel appearing for the petitioner has also stated that the case of the prosecution rests on the extra judicial confession statement and the statement was recorded by some other Village Administrative Officer, who is a stranger. The signature of the petitioner is not available in the extra judicial confession statement and the Village Administrative Officer, who recorded the confession statement, has stated that he has not visited the place of occurrence and the dead body, before lodging the complaint, which is in contra to Ex.P1. It also appears that the police has also called for sniffer dog in this case.

9. According to the prosecution case, the occurrence had taken place in a fit of anger, when the deceased gave sex torture to his wife / the petitioner in the influence of alcohol. Therefore, even if the prosecution case is established, the petitioner is liable for a lesser punishment for the offence under Section 304(ii) IPC and not for the offence under Section 302 IPC.

10. Considering the facts and circumstances of the case and that since the petitioner has made certain arguable points in her favour, this Court is inclined to suspend the substantive sentence of imprisonment imposed on the petitioner, 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 learned Judicial Magistrate No.IV, Tirunelveli.
- ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Court may obtain a copy of their Aadhar Card or Bank passbook to ensure their identity.
- iii. The petitioner shall report before the learned Judicial Magistrate No.IV, Tirunelveli at 10.30 a.m. on the first working day of every month, until further orders.
- iv. On any particular date, if the petitioner is not able to appear, leave is granted to her to file application under Section 317 Cr.P.C. and appear before the Committal Court on any other day, as determined by the Committal Court, in lieu of the day on which he would absent.



11. In fine, this criminal miscellaneous petition stands allowed.

WEB COPY

/ TRUE COPY /

sd/-
03/06/2021

/ /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 IV ADDITIONAL SESSIONS JUDGE, TIRUNELVELI.
2. THE JUDICIAL MAGISTRATE No.IV, TIRUNELVELI.
3. DO-THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
4. THE SUPERINTENDENT,
CENTRAL PRISON (WOMEN'S JAIL),
MADURAI.
5. THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION,
TIRUNELVELI CITY.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.1037 of 2021
IN
CRL A (MD) No.61 of 2021
Date : 03/06/2021

GK

TE/VR/SAR-IV : 03/06/2021 : 4P/7C