



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

Monday, the Twenty Eighth day of June Two Thousand and Twenty One

PRESENT

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

CRL MP(MD) No.1480 of 2021
in
CRL A(MD)No.84 of 2021

FLORAMARY ... PETITIONER/APPELLANT/ACCUSED No.3

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
DINDIGUL TOWN SOUTH POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.490/2016

... RESPONDENT/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 imposed on the petitioner/Appellan/Accused in S.C.No.64 of 2018 dated 23/01/2021 on the file of the Learned Fast Track Mahila Judge, Dindigul and enlarge him on bail pending disposal of the appeal.

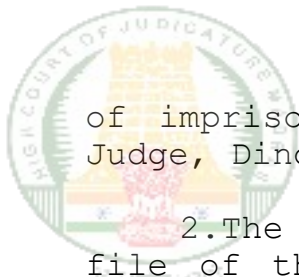
Prayer in CRL A(MD)No.84 of 2021:

To call for the records and set aside the order of conviction and sentence passed in S.C.No.64 of 2018 dated 23.01.2021 on the file of the Learned Fast Track Mahila Judge, Dindigul and allow this appeal and acquit the Appellant/Accused from the charge leveled against him.

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.AK.AZAGARSAMI, Advocate for the petitioner and of Mr.S.RAVI, Standing counsel for Government on behalf of the Respondent, the Court made the following order:-

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

This Criminal Miscellaneous Petition has been filed by the petitioner/accused No.3 seeking to suspend the substantive sentence
<https://hcservices.ecourts.gov.in/hcservices/>



of imprisonment imposed on her by the learned Fast Track Mahila Judge, Dindigul, by Judgment, dated 23.01.2021 in S.C.No.64 of 2018.

2.The petitioner was accused No.3 in S.C.No.64 of 2018 on the file of the Fast Track Mahila Court, Dindigul and she was tried along with her mother, brother and sister. The charges were under Section 302 I.P.C for accused No.1 and 302 r/w 109 I.P.C for accused Nos.2 to 4. The learned trial Judge found that accused Nos.1 and 3 guilty for the charges and sentenced them to undergo imprisonment for life with a fine of Rs.15,000/-, which carries default clause and acquitted accused Nos.2 and 4. Questioning the propriety of the decision of the learned trial Judge, the present Appeal has been filed by accused No.3. Pending trial, she seeks suspension of sentence.

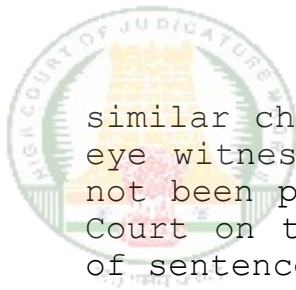
3.The story of the prosecution is that the deceased Vanitha was married to accused No.1-Arockiya Jerald in a Church situate at Vadipatti as per Christian Rights and Customs on 05.09.2014. Accused No.2 is the mother and Accused Nos.3 and 4 are the sisters of Accused No.1. P.W.1 is the mother of the deceased Vanitha.

4.The case of the prosecution is that after the marriage, the deceased Vanitha was living with accused Nos.1 to 4 as joint family in their house situate at Begambur, Mettupatti, Dindigul District. During which period, all the accused have joined together and physically harassed the deceased Vanitha and hence, she herself lodged a compliant with Dindigul Town South Police Station and All Women Police Station. Enraged over the same, on 05.07.2016 at about 02.00 p.m., accused Nos.2 to 4 instigated accused No.1 to do away his wife. In pursuance thereof, at about 02.45 p.m., on 05.07.2016, accused No.1 called the deceased Vanitha to his two-wheeler workshop, where he strangulated the deceased Vanitha by using her sudithar shawl and thereafter, assaulted her with scissor and thereby caused her death.

5.In order to prove the case of the prosecution, P.W.1 to P.W.20 were examined and Ex.P.1 to Ex.P.29 were marked and M.Os.1 to 7 were also marked. Accepting the case of the prosecution, the trial Court convicted accused Nos.1 & 3 and sentenced them as stated supra.

6.Mr.AK.Azagarsami, learned counsel appearing for the petitioner would argue that the charge against the petitioner is that at about 02.00 p.m., on 05.07.2016, she instigated his brother/A.1 to cause the death of the deceased Vanitha. Though the prosecution has examined P.W.5 and P.W.6 to substantiate the charge, they have turned hostile. According to the learned counsel appearing for the petitioner, except P.W.5 and P.W.6, no other incriminating material is available to implicate the petitioner. The learned

<https://hcservices.courts.gov.in/hcservices/>



similar charge, have been acquitted by the trial Court. There is no eye witness and the circumstances relied on by the respondent have not been proved. However, the petitioner was convicted by the trial Court on the basis of Ex.P.23 and Ex.P.24 and prays for suspension of sentence.

WEB COPY

7.Per contra, the learned Standing Counsel appearing for the respondent submitted that the prosecution has proved the case against the accused beyond reasonable doubt. It is contended that within a period of two years from the date of marriage, the deceased Vanitha was done to death by accused No.1 at the instigation of accused Nos.2 to 4. He further added that during enquiry, based on the complaints, which were marked as Ex.P.23 and Ex.P.24, the petitioner has given an undertaking that she will not interfere with the matrimonial dispute of the deceased and accused No.1, but only, at her instigation, the occurrence had taken place and hence, the trial Court has rightly convicted the accused and therefore, she is not entitled for any indulgence of this Court.

8.This Court carefully considered the rival submissions and gone through the materials.

9.In the material on hand, it is not in dispute that the deceased Vanitha is the wife of accused No.1 and the marriage between them was performed at a Church situate at Vadipatti. As rightly pointed out by the learned counsel for the petitioner that accused Nos.2 to 4 were charged under Section 302 r/w 109 I.P.C., it is the prosecution case that at about 02.00 p.m., on 05.07.2016, accused Nos.2 to 4 instigated accused No.1 to eliminate the deceased. Admittedly, accused Nos.2 and 4 were acquitted by the trial Court.

10.A perusal of the records show that based on the complaint given by the deceased-Ex.P.23 and Ex.P.24, investigation was carried out and during the investigation, the petitioner appeared before the police and gave a statement that she will not interfere with the matrimonial dispute of accused No.1 and the deceased Vanitha. It appears that based on the undertaking the petitioner came to be convicted, while other two accused viz., accused Nos.2 and 4, were acquitted by the trial Court. It is also seen that the petitioner is a lady, aged about 37 years and she is in judicial custody for the past six months.

11.Considering the above aspects, we are of the opinion that the petitioner/accused No.3 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

<https://hcservices.ecourts.gov.in/hcservices/> charged 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 Fast Track Mahila Court, Dindigul.

WEB COPY

ii. The petitioner shall appear before the learned Fast Track Mahila Judge, Dindigul, at 10.30 a.m. on the first working day of every English Calendar month 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 Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-
28/06/2021

/ TRUE COPY /

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

TO

- 1.THE FAST TRACK MAHILA JUDGE,
DINDIGUL.
- 2.THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN, MADURAI.
- 3.THE INSPECTOR OF POLICE,
DINDIGUL TOWN SOUTH POLICE STATION,
DINDIGUL DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.1480 of 2021
in
CRL A (MD) No.84 of 2021
Date :28/06/2021

ps
AE/MNR/SAR-1/02.07.2021/4P/5C

<https://hcservices.ecourts.gov.in/hcservices/>