



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

Tuesday, the Tenth day of August Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice J.NISHA BANU

CRL MP(MD) No.1666 of 2021
in
CRL A(MD) No.95 of 2021

LAKSHMI

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
KADAYAM POLICE STATION,
TENKASI DISTRICT.
CRIME NO. 46 OF 2018.

... 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 pursuant to the judgment of conviction render by the Hon'ble Principal Sessions Judge,Tirunelveli in SC.No.584 of 2018 dated 05.01.2021 pending disposal of the above Criminal Appeal.

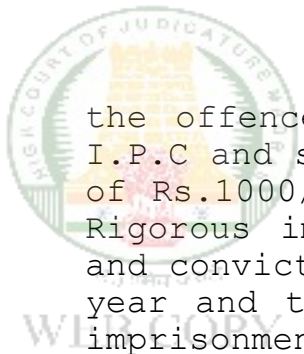
Prayer in CRL A(MD). 95/ 2021 :

To admit the Appeal on file, and to call for the records from the Hon'ble Principal Sessions Judge, Tirunelveli, in S.C.No.584/2018 dated 05.01.2021 and set aside the same and acquitted the appellant/accused.

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.J.JEYAKUMARAN, Advocate for the petitioner and of Mr.S.RAVI Standing Counsel for the Respondent, the court made the following order:-

(Order of the Court was made by **V.BHARATHIDASAN, J.**)

The petitioner is the sole accused in S.C.No. 584 of 2018, on the file of the learned Principal Sessions Judge, Tirunelveli, stood charged for an offence under Section 302 IPC, 201 r/w 302 and 203 IPC. The trial Court, on appreciation of evidence convicted her for



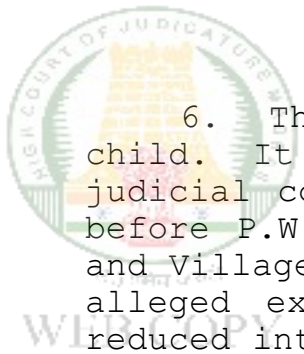
the offence under Sections 302, 201 r/w 302 of I.P.C and 203 of I.P.C and sentenced her to undergo life imprisonment and to pay fine of Rs.1000/-, in default, to undergo a further period of two years Rigorous imprisonment for the offence under Section 302 of I.P.C, and convicted and sentenced to undergo Rigorous imprisonment for one year and to pay fine of Rs.500/-, in default, to undergo Rigorous imprisonment for six months, for the offence under Section 201 r/w 302 of I.P.C. and further convicted and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.500/-, in default, to undergo Rigorous imprisonment for three months for the offence under Section 203 of I.P.C. The sentences were ordered to be run concurrently. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, she seeks for suspension of sentence.

2. The case of the prosecution, in brief, is that the petitioner is mother of 2 years old child namely, Aryaa. Believing the Zodiac predictions, right from the birth of the child, the petitioner hated the child. On 14.02.2018, at about 2.15 hours, the deceased thrown the sleeping child in a plastic drum, in which, water was filled, thereby, causing the death of the child. Hence, the Crime was registered and ultimately, she was convicted and sentenced as stated above.

3. The learned counsel appearing for the petitioner / appellant would submit that, it is a case of circumstantial evidence and there is no eyewitness to the occurrence. Based on the extra judicial confession given by the petitioner / accused before P.W.1 and P.W.2, who are the Village Administrative Officer and Village Assistant, an FIR has been registered. Admittedly, the alleged extra judicial confession given by the accused was not reduced into writing. Apart from that, the other available evidence, including the evidence of the father of the child / P.W.5 absolutely there is no material to connect the appellant with the death of the child. The trial Court, without considering the same, has convicted the appellant.

4. Mr.S.Ravi, learned Standing Counsel appearing for the State strongly opposed the bail application stating that based on the extra judicial confession given by the accused to the Village Administrative Officer, a known person, FIR has been registered and the child is two months old age and it was in the custody of the appellant / mother and absolutely, there is no explanation by the accused for the cause of death. That apart, the other circumstances clearly establishes the guilt of the accused. The trial Court has rightly convicted the appellant and she is not entitled for bail.

5. We have considered the rival submissions made and perused the materials available on record.



6. The appellant is the mother of the deceased two months old child. It is a case of circumstantial evidence. Based on the extra judicial confession said to have given by the petitioner / accused before P.W.1 and P.W.2, who are the Village Administrative Officer and Village Assistant, the FIR has been registered. Admittedly, the alleged extra judicial confession given by the accused was not reduced into writing. That apart, the evidence of P.W.5, the husband of the accused, in his cross examination had clearly stated that P.W.1 came to the scene of occurrence only along with the police. Hence, the extra judicial confession given by the appellant is also doubtful.

7. That apart, the other witnesses viz., P.W.3 and P.W.4, who are neighbours, also seen the appellant carrying the child some time before the occurrence to P.W.5's home and then left the child in her parents house. Considering all those circumstances, a doubt has been created regarding involvement of the petitioner in this occurrence, therefore, we find that, a *prima facie* case has been made out for grant of suspension of sentence.

8. Considering the above aspects, we are inclined to grant suspension of sentence. 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 executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like-sum to the satisfaction of the Principal Sessions Court, Tirunelveli.

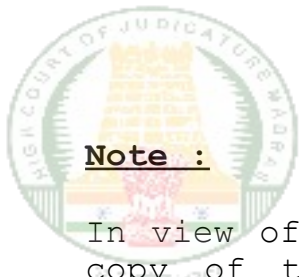
ii. The petitioner shall appear before the trial Court at 10.30 a.m., on the first working day of every English calendar month until further orders.

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 of Cr.P.C. and appear before the Court concerned on any other day, as determined by the Court concerned, in lieu of the day on which he would absent.

sd/-
10/08/2021

/ 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 PRINCIPAL SESSIONS JUDGE, TIRUNELVELI.
- 2.THE INSPECTOR OF POLICE
KADAYAM POLICE STATION,
TENKASI DISTRICT.
- 3.THE SUPERINTENDENT,
CENTRAL JAIL (WOMEN) , MADURAI .
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI .

+1. C.C. to Mr.J.Jeyakumaran, Advocate SR.No.5237

ORDER

IN

CRL MP (MD) No.1666 of 2021
in

CRL A (MD) No.95 of 2021

Date :10/08/2021

SA/PN/SAR.1/11.08.2021/4P/6C