



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

Wednesday, the Sixteenth day of June 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.1723 of 2021

IN

CRL A(MD) No.419 of 2019

KAMARAJ @ SAMSA KAMARAJ

... APPELLANT/APPELLANT/SOLE ACCUSED

Vs

STATE REP.BY

THE INSPECTOR OF POLICE,
THILLAINAGAR POLICE STATION,
TRICHY DISTRICT.

(IN CRIME NO.272 OF 2014)

... 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 and convictin made in the judgment in S.C.NO.146 of 2017 on the file of the Sessions Judge, Mahila Court, Tiruchirapalli, dated 11/07/2019.

Prayer in CRL A(MD) No.419 of 2019:

To call for the Judgment dated 11.07.2019 made in S.C.NO.146 of 2017 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli and set aside the same.

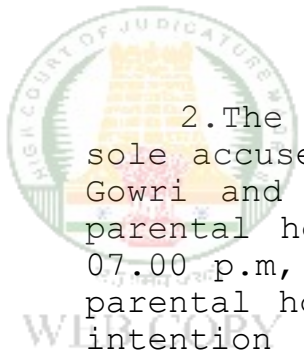
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.ANANDAKUMAR.N., Advocate for the petitioner and of MR.S.RAVI, Standing Counsel for Government on behalf of the Respondent, the court made the following order:-

Reserved on : 11.06.2021

Pronounced on : 16.06.2021

(Order of the Court was made by G.ILANGO VAN, J)

This Criminal Miscellaneous Petition is filed to suspend the substantive sentence passed by the Sessions Judge, Mahila Court, Tiruchirappalli, in SC No.146 of 2017, dated 11.07.2019 and enlarge the petitioner/Appellant on bail pending disposal of the criminal appeal.



2.The case of the prosecution is that the petitioner is the sole accused before the Trial Court. He was married to the deceased Gowri and due to the frequent quarrel, the deceased went to her parental home, on the previous occasions. On 05.07.2016, at about 07.00 p.m, in the night hours, the deceased talked about to go her parental home and at that time, the petitioner got angry and with intention to commit murder, poured kerosene on the body of the deceased and set her on fire. She was admitted in the Government Hospital, Trichy and died on 13.07.2016, at about 10.30 p.m. So, he was charged under Section 302 IPC.

3.To prove the charge, the prosecution examined 17 witnesses and marked 15 documents as well as 10 material objects. On the side of the accused, no witness was examined and no document marked.

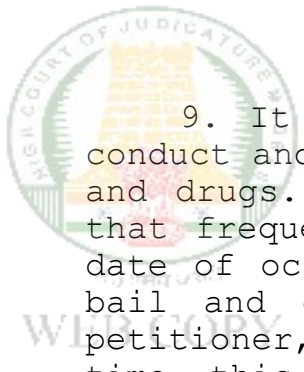
4.The trial court, after considering the materials available on records, came to the conclusion that the charge framed against the accused has been proved beyond all reasonable doubt and convicted and sentenced him to undergo life imprisonment with a fine of Rs.1,000/-, in default to undergo 1 year rigorous imprisonment.

5. Challenging the conviction and sentence of the trial court, the appeal has been preferred by the petitioner and along with the appeal, seeking suspension of sentence, this criminal miscellaneous petition is filed.

6. The learned counsel for the petitioner mainly concentrated on only one point that it is a case of suicide and when the deceased committed self immolation, the petitioner tried to save her and in that process, he also sustained burn injuries. But, this important aspect was not properly investigated by the Investigation Officer and the Trial Court has also failed to take into account. So, according to him, this aspects, is enough for doubting the prosecution version.

7. Per contra, the learned Standing Counsel for Government appearing for the State would submit that the deceased gave dying declaration before the learned Judicial Magistrate, who has been examined as P.W.11 and in the course of the statement she has clearly stated that only the petitioner poured kerosene and set her on fire. No materials have been brought on record during the course of trial by the petitioner to doubt veracity of the dying declaration. Being a wife burning case, no sympathy should be extended to this petitioner and this petition should to be dismissed.

8. Heard Mr.N.Anandakumar, learned counsel appearing for the petitioner and Mr.S.Ravi, learned Standing Counsel for Government appearing for the State and perused the materials available on record.



9. It is seen that the petitioner was not maintaining a good conduct and character throughout his life. He was addicted to liquor and drugs. Because of the character of the petitioner, it appears that frequent quarrel arose between him and his wife. Even on the date of occurrence, it is seen that the petitioner was released on bail and came to the house and because of the conduct of the petitioner, the deceased tried to leave the matrimonial home. At that time, this occurrence alleged to have taken place.

10. It is seen that except the bad character and conduct of the petitioner, there was no major matrimonial dispute between the husband and wife. There is no material available on record to show that the petitioner intended to commit murder.

11. The learned counsel for the petitioner would submit that in the facts and circumstances of the case, in the main appeal, he is going to argue only for the modification of the sentence on the ground that there was no motive to commit the murder. But, however, this argument cannot be taken into account at this stage.

12. In normal and usual assault case, it may be the duty of the prosecution to explain the injuries suffered by the accused person. But, this case is not of such a nature.

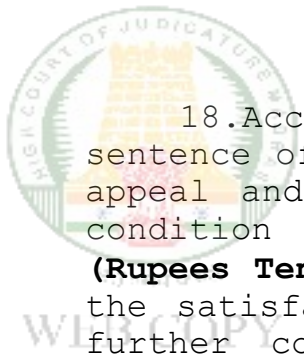
13. The one of the eyewitnesses to the occurrence namely, P.W.2 is an independence witness. She would say that the deceased committed self immolation. The neighbours and the petitioner tried to save the deceased. She was treated hostile by the prosecution.

14. But, P.W.3 who is also a neighbour would say that the deceased came out from the house crying with fire and fell on the ground and at that time, the accused was not present in the place of occurrence.

15. P.W.4, would say that the petitioner tried to save the deceased from the fire. He was also treated as hostile witness. P.W.5 would also say that they admitted the deceased in the hospital. She was also treated as hostile witness.

16. In the light of the above said oral evidence, the prosecution heavily relied upon the dying declaration of the deceased. So, from the above said discussion, we are of the considered view that some arguable points are available in favour of the petitioner to put forth during the course of main appeal. Moreover, he is in the custody from the date of judgment i.e., 11.07.2017 and at the time of occurrence, they had a child, which requires proper care and custody.

17. So, considering the above said facts, we are inclined to grant suspension of sentence to the petitioner with certain



18. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute 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 Judicial Magistrate No.IV, Trichy, and on further condition that the petitioner shall appear before the concerned respondent police once in a week i.e., on every Monday at 10.00 a.m, pending appeal.

sd/-
16/06/2021

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

TO

- 1 THE SESSIONS JUDGE,
MAHILA COURT, TIRUCHIRAPALLI.
- 2 THE JUDICIAL MAGISTRATE NO.IV,
TRICHY.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY.
- 4 THE INSPECTOR OF POLICE,
THILLAINAGAR POLICE STATION,
TRICHY DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.1723 of 2021
IN
CRL A(MD) No.419 of 2019
Date :16/06/2021

DSS
JM/VR/SAR III/16.06.2021/4P/7C