



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

Tuesday, the Seventeenth day of August Two Thousand and Twenty One
PRESENT

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

CRL MP(MD) No.5234 of 2021
IN
CRL A(MD) No.317 of 2021

KUMAR @ SONI KUMAR

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
EAST POLICE STATION, THANJAVUR,
THANJAVUR DISTRICT.
CRIME NO. 738 OF 2013.

... 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 Sentence of Imprisonment imposed in SC.No.443 of 2015 on the file of the learned Principal Sessions Judge/Fast Track Mahila Court, Thanjavur, dated 07.08.2019, and enlarge the Petitioner/Appellant on bail, pending disposal of the Criminal Appeal.

PRAYER IN CRL A(MD)317 of 2021:

To acquit the appellant and set aside the judgment made in S.C.No.443 of 2015 on the file of the learned Principal Sessions Judge/Fast Track Mahila Court, Thanjavur, dated 07.08.2019 to impose the sentence to undergo the accused is convicted under section 457 of IPC and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2000/-indefault one year simple imprisonment. The accused is convicted under Section 302 of IPC and sentenced to undergo a life imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year simple imprisonment. The accused is convicted under Section 382 of IPC and sentenced to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.2000/- in default to of Rs.16,000/- and allow this criminal Appeal.

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.M.KRISHNAVENI, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for the State on behalf of the Respondent the court made the following order:-



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

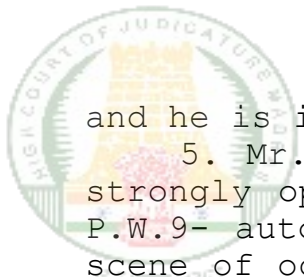
The Petitioner is the sole accused in S.C.No.443 of 2015, on the file of the Fast Track Mahila Court, Thanjavur. The petitioner was found guilty and convicted and sentenced as follows-

S.No.	Provision under which convicted	Sentence of Imprisonment	Fine Amount
1	449 IPC	5 Years R.I.	Rs.20,000/-, in default, to under one year Simple Imprisonment.
2	457 IPC	5 Years R.I.	Rs.20,000/-, in default, to under one year Simple Imprisonment.
3	302 IPC	Life Imprisonment	Rs.10,000/-, in default, to under one year Simple Imprisonment.
4	382 IPC	5 Years R.I.	Rs.2,000/-, in default, to under one year Simple Imprisonment.

2. The case of the prosecution is that the deceased viz., Bakkiam was running a gunny bag shop at Anna Salai, Thanjavur. On 18.09.2013 night, the accused said to have entered into the shop and awaiting inside the shop. In the next day morning ie., on 19.03.2013, at about 6.30 a.m., when the deceased opened the shop, the accused strangled her and caused her death and removed the gold chain and other gold ornaments, worth about to Rs.1,20,000/- and ran away from the scene of occurrence. Thereafter, he was arrested on 04.07.2015 and on his arrest, he has given a voluntary confession, admitting the guilt. The gold chain and bangles belonged to the deceased have been recovered from the accused and thereafter, he was remanded to judicial custody.

3. The trial Court, after considering the materials, convicted the accused and sentenced him as above. Challenging the same, the petitioner / appellant has filed the present appeal. Pending appeal, the petitioner / appellant seeks suspension of sentence.

4. The learned counsel appearing for the petitioner would submit that the alleged occurrence had taken place on 19.09.2013 and the petitioner on suspicion was arrested only on 04.07.2015. She further submitted that, it is a case of circumstantial evidence and as per the evidence of P.W.9, auto driver and P.W.10 - person residing in the area nearby scene of occurrence said to have seen the accused previous day of the occurrence, roaming around the area. Except that, absolutely no other circumstances to point out the guilt of the accused. Since the petitioner is already having



and he is in jail for more than six years.

5. Mr.S.Ravi, learned Standing Counsel appearing for the State strongly opposed the bail application stating that the evidence of P.W.9- auto driver and P.W.10 - person residing in the area nearby scene of occurrence, who said to have seen the accused previous day of the occurrence, roaming around the area. That apart, the gold chain and bangles belonged to the deceased were also recovered from the accused, which are strong circumstances against the accused. Considering those material, the trial Court has rightly convicted the accused and there is no error in the Judgment.

6. We have considered the rival submissions made and perused the materials available on records.

7. It is a case of circumstantial evidence and the occurrence had taken place on 19.09.2013, and subsequently, after nearly two years, the accused was arrested by the respondent police on suspicion. Except the evidence of P.W.9 and P.W.10, there is no other circumstance against the petitioner/appellant. Even the recovery of gold jewels belonging to the deceased, after nearly two years, cannot said to be a strong circumstance against the accused.

8. Considering the above facts and circumstances of the case and also considering the fact that the petitioner / appellant is in jail for more than 6 years, 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 learned Judicial Magistrate, Thanjavur.

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.

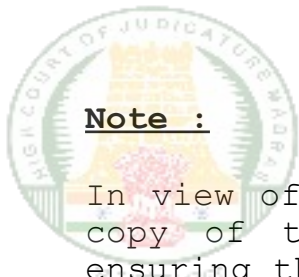
sd/-

17/08/2021

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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,
FAST TRACK MAHILA COURT, THANJAVUR.
- 2.THE JUDICIAL MAGISTRATE,
THANJAVUR.
- 3.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.
- 4.THE SUPERINTENDENT
CENTRAL PRISON, TRICHY.
- 5.THE INSPECTOR OF POLICE
EAST POLICE STATION, THANJAVUR,
THANJAVUR DISTRICT.
- 6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.KRISHNAVENI M Advocate SR.No.5467

ORDER

IN

CRL MP(MD) No.5234 of 2021

IN

CRL A(MD) No.317 of 2021

Date :17/08/2021

SA/PN/SAR.2/18.08.2021/4P/8C