



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

Tuesday, the Twenty Second 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.3850 of 2021

in

CRL A(MD) No.9 of 2020

SELVAKANI

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KADAMALAIKUNDU POLICE STATION,
THENI DISTRICT.
CRIME NO.338/2012

... 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 S.C.No.105/2013 dated 25/09/2019 on the file of the Sessions Judge, Mahalir Fast Track Court, Theni and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

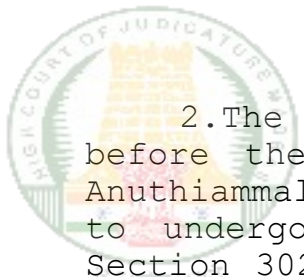
Prayer in CRL A(MD) No.9 of 2020:

To call for the records relating to the judgment in S.C.No.105/2013 dated 25.09.2019 on the file of the Sessions Judge, Mahalir Fast Track Court, Theni and set aside the same acquit the appellants/accused from all the charges leveled against them.

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.AZAGARSAMI.AK., Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel 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/appellant seeking to suspend the sentence of imprisonment imposed in S.C.No.105 of 2013, dated 25.09.2019, on the file of Sessions Judge, Mahalir Fast Track Court, Theni and to enlarge the Petitioner on bail, pending the disposal of the above said Criminal

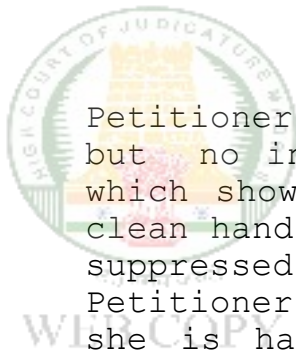


2.The Petitioner is the wife of Solaimalai. Both were tried before the Mahalir Fast Track Court, Theni for murder of one Anuthiammal. The Trial Court, found them guilty and sentenced them to undergo life imprisonment for the offence of murder under Section 302 IPC with a fine of Rs.10,000/- and 7 years rigorous imprisonment for the offence under Section 201 IPC and to pay a fine of Rs.10,000/- carrying default sentence. Challenging the said conviction and sentence, the present Criminal Appeal has been filed. Though the appeal has been filed by both the accused, this Petition is filed by the second accused, seeking suspension of sentence, pending the appeal.

3.The story of the prosecution is that the accused No.1 and 2 are husband and wife. The Rajangam is the elder brother of the first accused. They insisted the land of the said Rajangam to be leased out to them, but he was not willing to lease the land to the accused. 4 to 5 days prior to the date of occurrence ie., on 28.12.2012, the deceased sought permission of the accused to transport tree through the land of the Petitioner, but they refused. Enraged over the act of the deceased, at 11.00 a.m., on 28.12.2012, the deceased was taken into the house of the accused under the guise of negotiation and thereafter, the second accused poured kerosene on the deceased and thereafter the accused No.1 set fire on her. To conceal the offence, the accused have taken the deceased to her house and made her to hang, thereby, they had committed the offence under Section 302 and 201 r/w Section 34 of IPC.

4.The prosecution, to establish the case against the accused, examined in all 25 witnesses and marked 14 documents and produced 12 material objects. On appreciation of evidence, the trial Court came to the conclusion that the charges against the accused have been proved beyond reasonable doubt and found them guilty and sentenced to undergo imprisonment, as stated supra.

5.Mr.AK.Azhagarsami, learned counsel appearing for the Petitioner would argue that there is no eyewitness to the incident and the prosecution relies on circumstantial evidence. According to the learned counsel for the Petitioner, the circumstance relied on by the prosecution have not been proved. It is further submitted that P.W.4 was examined to show that at about 11.00 a.m., on 28.12.2012, there was a wordy altercation between P.W.5 and the accused 1 and 2, but P.W.4 has not mentioned about the incident that is said to have been taken place on the date of incident. It is his submission that the prosecution should have treated P.W.4 as hostile witness and instead of cross-examining, he was examined as a supporting witness. It is further submitted that as per the prosecution, the accused No.2 was arrested at 1.00 p.m., on 30.12.2012 and in pursuance of her confession statement, material objects were recovered. But the Investigating Officer-P.W.25 has stated that the material objects were not recovered in the place of P.W.15. It is also contended that the



Petitioner/accused No.2 sustained injuries in the same transaction, but no investigation was carried out by the Investigating Agency, which shows that the prosecution has not come to the Court with clean hands and origin and genesis of the case has been deliberately suppressed. It is the submission of the learned counsel for the Petitioner that the Petitioner is a lady, aged about 34 years and she is having two female children and she has been in judicial custody for about two years along with her husband and hence the entire family has already been suffered extensively. Therefore the Petitioner may be enlarged on bail.

6.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State/respondent would argue that even though there is no eyewitness to the occurrence, the prosecution has categorically proved the involvement of the accused in this case. He further added that the deceased was set fire in the house of the accused and thereafter the body was taken to the house of the deceased to make it appear that he had committed suicide by hanging. In the light of the involvement of the accused in this case, the Petitioner is not entitled for the relief of suspension of sentence.

7.Heard the rival submission made on either side and perused the materials available before this Court.

8.In the matter on hand, it is the case of the prosecution that the deceased Anuthiammal is the wife of P.W.5 Rajangam. P.W.5 and the first accused are blood brothers and the second accused is the wife of first accused. It is the prosecution case that there is a land dispute between P.W.5 and A1 and in this regard, there was a quarrel on the earlier occasions. Eventually, on 28.12.2012, the deceased was taken into the house of the accused and poured kerosene and set fire by the accused 1 and 2. Indisputably, there is no eyewitness to the incident. P.W.4, who is said to have seen the incident at 12.00 noon at 28.12.2012, has stated in the cross-examination that there were frequent quarrels between the accused and P.W.5, but he did not mention that on the date of occurrence he witnessed the quarrel between the accused and P.W.5. P.W.3 has admitted that the Petitioner/ A2 sustained injury in the course of same transaction. P.W.25 has not made any enquiry as to how the second accused/petitioner herein sustained injury. Further, it is seen that the Petitioner along with her husband was convicted and they are in judicial custody since September 2019 and they are having two female children. Furthermore, we find some arguable points in the appeal.

9.Taking note of the fact that the Petitioner is a lady and she has been in judicial custody for about two years, we are of the opinion that the accused 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

<https://hdcervices.courts.gov.in/hdcervices/> 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 Sessions Judge, Mahalir Fast Track Court, Theni.

ii. The petitioner shall appear before the learned Sessions Judge, Mahalir Fast Track Court, Theni 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 he would absent.

sd/-

22/06/2021

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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 SESSIONS JUDGE,
MAHALIR FAST TRACK COURT, THENI.
- 2 THE INSPECTOR OF POLICE,
KADAMALAIKUNDU POLICE STATION,
THENI DISTRICT.
- 3 THE OFFICER INCHARGE,
CENTRAL PRISON FOR WOMEN, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.3850 of 2021
in
CRL A(MD) No.9 of 2020
Date :22/06/2021

VSN

JM/PN/SAR III/28.06.2021/4P/5C

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