



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

Wednesday, the Eighth day of September Two Thousand and Twenty One
PRESENT

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

CRL.M.P. (MD) .NO.5999 OF 2021
IN
CRL.A. (MD) .NO.350 OF 2021

1 ALEXPANDIAN
2 IRUVAKKAL

... PETITIONER/ APPELLANTS

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
THIRUCHULLI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.12 OF 13.

... 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 conviction and sentence imposed on the petitioners by the Learned Fast Track Mahila Court, Virudhunagar district at Srivilliputhur in S.C.No.113 of 2013 dated 21/11/2020 and enlarged the petitioners on bail till the disposal of this appeal.

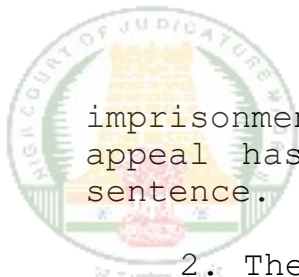
Prayer in CRL.A.(MD).No.350 of 2021:

To call for the records and set aside the Judgment of the Learned Fast Track Mahila Court, Virudhunagar district at Srivilliputhur passed against the appellants in S.C.No.113 of 2013 dated 21/11/2020 and acquit them from all the charges.

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.B.MUNEESWARAN, Advocate for the petitioner and of MR.A.THIRUVADI KUMAR, Counsel for Government of Tamil Nadu (Criminal Side) on behalf of the Respondent, the court made the following order:-

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

Totally there are two accused in S.C.No.113 of 2013, on the file of the Learned Sessions Judge, Mahalir Neethimandram, Srivilliputtur. The petitioners / appellants are A1 and A2 respectively and they stood charged for the offence under Section 302 IPC., and sentenced to undergo life imprisonment and to pay fine of Rs.10,000/-, in default, to undergo six months simple



imprisonment. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, they seek suspension of sentence.

2. The case of the prosecution is that the deceased is the wife of the 1st accused and the 2nd accused is the mother-in-law of the deceased. Marriage between the deceased and the 1st respondent took place three years prior to the occurrence and out of the wedlock, they got two children. There was domestic disputes between the deceased and the accused / appellants and there was a quarrel on the date of occurrence, on 12.01.2013, and at about 8.00 p.m., once again A1 picked up quarrel with the deceased. During the quarrel, A2 poured kerosene on the deceased and A1 set fire on her. Immediately, she was taken to Government Hospital, Aruppukottai, and she was referred to Government Rajaji Hospital, Madurai. Based on the statement given by the deceased, the FIR has been registered. Subsequently, a Judicial dying declaration was also recorded at Government Rajaji Hospital at Madurai, wherein, the deceased had stated that it is only the accused poured kerosene on her and set fire. The Trial Court, on appreciation of evidence, found them guilty, convicted and sentenced them, as stated above.

3. Mr.B.Muneeswaran, the learned counsel appearing for the petitioners / appellants would submit that, except the dying declaration, there is no evidence available on record to connect the accused in the offence. Even in the dying declarations, there were lot of contradictions. The first dying declaration given by the deceased before Aruppukottai Government Hospital, she has stated that she caught fire while cooking. The FIR has been registered based on the statement given by the deceased, even though a Sub-Inspector of Police was available at that time, the statement of the deceased was recorded by one of her close relatives. Before registering the FIR, a Judicial dying declaration was obtained and it is also contradictory to the earlier dying declaration. Hence, deliberation and tutoring cannot be ruled out.

4. Mr.S.Ravi, the learned Standing counsel appearing for the State would submit that, the conviction is mainly on the dying declaration of the deceased. In the judicial dying declaration, the deceased clearly implicated both the accused. The FIR has been registered, based on the statement of the deceased, wherein also, the deceased has clearly implicated the accused and there is no inconsistency in the dying declaration and the trial Court also believing the dying declaration, convicted the accused and there is no reason to suspend the sentence.

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

6. The conviction was based on the dying declaration of the deceased. There are three dying declarations. The first statement,



which was given before the Government Hospital, Aruppukottai, where she was given first aid, the deceased stated that she caught fire while cooking. Subsequently, she was referred to Government Rajaji Government Hospital, Madurai, wherein judicial dying declaration was recorded at about 12.45 in the midnight, wherein she implicated the accused. After that, P.W.11 / SSI of Police recorded the statement of the deceased in the hospital at about 4.00 a.m., in the next day morning, wherein, she also implicated the accused. From the perusal of the above dying declarations, we find some inconsistencies in the dying declarations. That apart, at the time of occurrence, some neighbours were present and they only doused fire, but they have not implicated the appellants / accused.

7. Considering those circumstances, we are of the opinion that a prima facie case has been made out for suspending the sentence. Accordingly, the Criminal Miscellaneous Petition is allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like-sum to the satisfaction of the learned Fast Track Court, Virudhunagar District @ Srivilliputhur.

ii. The petitioners 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 petitioners are not able to appear, leave is granted to the petitioners 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/-
08/09/2021

/ 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



TO

- 1 THE FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
 - 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 - 3 THE SUPERINTENDENT,
CENTRAL PRISON (WOMEN WING), MADURAI.
 - 4 THE INSPECTOR OF POLICE
THIRUCHULLI POLICE STATION, VIRUDHUNAGAR DISTRICT.
 - 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to MR.M/S.B.MUNEESWARAN, Advocate(SR-6069[I] dated 08/09/2021)

ORDER
IN
Crl.M.P. (MD) .No.5999 of 2021
in
Crl.A. (MD) .No.350 of 2021
Date :08/09/2021

MPK
MK/VR/SAR.IV/09.09.2021/4P/7C