



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

Monday, the Twenty Third day of August Two Thousand and Twenty One

PRESENT

WEB COPY

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

CRL MP(MD) NO.6035 OF 2021
AND
CRL MP(MD) NO.4407 OF 2021
IN
CRL.A.(MD)NO.160 OF 2020
AND
CRL.A.(MD)NO.266 OF 2021

CRL MP(MD) NO.6035 OF 2021:

SARAVANAN ... PETITIONER/ APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
C3, S.S. COLONY (L AND O) POLICE STATION, MADURAI.
CRIME NO.754 OF 2011. ... 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 imposed by the court of the sessions judge, Mahalir Neethimandram, Madurai in S.C.No.240 of 2014 on 07/03/2020 and release the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD). 160/ 2020 :

To set aside the conviction and sentence imposed by the court of the the sessions judge, Mahalir Neethimandram, Madurai in S.C.No.240 of 2014 on 07/03/2020 as against the Appellant/Accused No.2 and allow this Criminal Appeal.

CRL MP(MD) No.4407 of 2021:

SAKTHIVEL MURUGAN ... PETITIONER / APPELLANT /ACCUSED NO.1

VS

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
C3, S.S.COLONY(L AND O) POLICE STATION, MADURAI.
CRIME NO.754 OF 2011. ... 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 imposed on the Petitioner/Appellant/Accused No.1 in SC.No.240 of 2014 dated 07.03.2020 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai and enlarge him on bail pending disposal of the appeal.

Prayer in CRL A(MD). 266/ 2021 :

To call for the records and set aside the order of conviction and sentence passed in S.C.No.240 of 2014 dated 07/03/2020 on the file of the sessions judge, Mahalir Neethimandram, Madurai and allow this appeal and acquit the Appellant/Accused from the charges leveled against him.

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.M.JOTHIBASU, Advocate for the petitioner in CRL MP (MD) NO.6035 OF 2021 and M/S.P.YASMIN BEGUM, Advocate for the petitioner in CRL MP(MD) No.4407 of 2021 and of MR.S.RAVI, Standing Counsel for state for the respondent in both the petitions, 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.240 of 2014, on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, the petitioners are A2 and A1 respectively. The petitioners were found guilty, convicted and sentenced as follows:-

S.N o	Rank of the Accused	Provision under which convicted	Sentence Imprisonment	Fine Amount
1	A1 & A2	302 r/w 34 IPC	Life Imprisonment	Rs.10,000/-, each in default, to under go six months Simple Imprisonment.
2	A1 & A2	404 IPC	2 Years R.I.	Rs.1,000/-, each, in default, to under go two months Simple Imprisonment.
3	A1 & A2	201 r/w 34 IPC	7 Months R.I.	Rs.5,000/-, each, in default, to under go six months Simple Imprisonment.

The sentences were ordered to run concurrently.



2. Challenging the conviction and sentence, the present appeals have been filed. Pending appeals, the petitioners / appellants have sought for suspension of sentence.

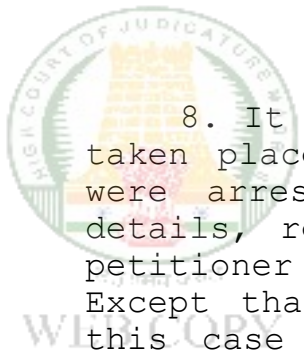
3. The case of the prosecution is that the deceased, viz., Latha, who is the wife of the de facto complainant viz., Gunasekaran, was working in a medical shop at Virattipathu and A1 in this case was working as a Medical Representative and they have developed intimacy. On 20.04.2011, A1 had sexual relationship with the deceased. At that time, A2 who is the friend of A1, also came there. A2 wanted to have sexual relationship with the deceased and since the deceased refused, there was a quarrel, in which, both the accused pushed the deceased, and she sustained injury on her head and fainted. Thereafter, they have strangled the deceased and caused her death, and they disposed the body in a canal. Thereafter, the body was recovered on 25.04.2011 in a highly mutilated condition, and the body was identified by PW.2, brother of the deceased, and the case was registered. Subsequently, A1 was arrested on 14.02.2014 and on his confession, A2 was also arrested and they were remanded to judicial custody.

4. The trial Court, after considering the materials, convicted the accused and sentenced them as above. Challenging the same, the petitioners / appellants have filed the present appeals, and pending appeals, they seek suspension of sentence.

5. The learned counsel appearing for the petitioners / appellants would submit that it is the case of circumstantial evidence, the occurrence was taken place on 20.04.2011 and the body was recovered after five days in a highly decomposed stage. P.W.1, the brother of the deceased, said to have identified the body, with the help of dress worn by the deceased and no superimposition test was conducted. Subsequently, after 4 years, A1 was arrested on suspicion and on his confession, A2 was also arrested. Except that, absolutely, there is no other material available on record to pointing out the guilt of the accused. The Trial Court, without considering the same, has convicted the accused.

6. Mr.S.Ravi, the learned Standing Counsel appearing for the State would submit that the call details collected by the Police, clearly indicates that A1 was in contact with the deceased and he frequently called the deceased before the occurrence. All other circumstances unerringly pointed out the guilt of the accused, and hence, the trial Court has rightly convicted the accused and there is no error in the Judgment, considering the gravity of the offence, sentence cannot be suspended.

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



8. It is a case of circumstantial evidence. The occurrence had taken place on 20.04.2011. Thereafter, the petitioners / accused were arrested after 4 years, based on some mobile phone call details, recovered by the respondent Police, which shows that the petitioner frequently contacted the deceased before the occurrence. Except that, there is no other strong circumstances available in this case pointing out the guilt of the accused. A2 has been implicated only based on the confession of A1.

9. 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 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/- each (Rupees ten thousand only) with two sureties, each for a like-sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram, Madurai and the Learned Judicial Magistrate No.V, Madurai respectively in Crl.M.P. (MD).No.6035 of 2021 and in Crl.M.P.(MD).No.4407 of 2021.

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/-

23/08/2021

/ TRUE COPY /

/ /2021

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

TO

1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, MADURAI.

2 THE JUDICIAL MAGISTRATE NO.V, MADURAI.



3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

5 THE INSPECTOR OF POLICE,
C3, S.S. COLONY (L AND O) POLICE STATION,
MADURAI.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. C.C. to M/S.P.YASMIN BEGUM, Advocate. SR.No.5589.

ORDER
IN
CRL MP (MD) NO.6035 OF 2021
AND
CRL MP (MD) NO.4407 OF 2021
IN
CRL.A. (MD) NO.160 OF 2020
AND
CRL.A. (MD) NO.266 OF 2021
Date :23/08/2021

MPK
MK/JC/SAR.III/24.08.2021/5P/9C