



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

Monday, the Twenty Seventh day of September Two Thousand and
Twenty One

WEB COPY

PRESENT

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

Crl.M.P. (MD) .No.6792 of 2021
in Crl.A. (MD) .No.52 of 2020
&
Crl.M.P. (MD) .No.6793 of 2021
in Crl.A. (MD) .No.503 of 2019

Crl.M.P. (MD) .No.6792 of 2021 in Crl.A. (MD) .No.52 of 2020:

P.GANESAN

... APPELLANT/ ACCUSED NO.2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
PUDUKOTTAI POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.189/2014

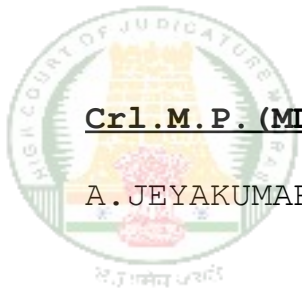
... RESPONDENT/ COMPLAINANT

PRAYER IN Crl.M.P. (MD) .No.6792 of 2021:

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 grant bail to the Appellant / Accused No.2 against the Conviction Judgment dated 20/08/2019 in S.C.No.460 of 2015 passed by the Sessions Judge, Mahalir Neethimandram (Mahila Fast Track Court) Thoothukudi District in Crime No.189 of 2014 on the file of the Respondent pending disposal of the instant Criminal Appeal.

PRAYER IN Crl.A. (MD) .No.52 of 2020:

To set aside the judgment of the Sessions Judge, Mahalir Neethimandram, Fast Track Court, Thoothukudi, dated 20.08.2019 made in S.C.No.460 of 2015 in so far as against the Appellant/ Accused No.2 herein, and allow the above appeal.



Crl.M.P. (MD) .No.6793 of 2021 in Crl.A. (MD) .No.503 of 2019:

A.JEYAKUMAR

... APPELLANT/ ACCUSED NO.1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
PUDUKOTTAI POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.189/2014

... RESPONDENT/ COMPLAINANT

PRAYER IN Crl.M.P. (MD) .No.6793 of 2021:

To grant suspension of sentence imposed in the Conviction Judgment in S.C.No.460 of 2015, on the file of the Sessions Judge, Magalir Neethimandram, Fast Track Court, Thoothukudi, dated.20/08/2019 and enlarge the Appellant / Accused No.1 on Bail pending disposal of the above Criminal Appeal.

PRAYER IN Crl.A. (MD) .No.503 of 2019:

To set aside the judgment of the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Thoothukudi District, dated 20.08.2019 made in S.C.No.460 of 2015 in so far as against the Appellant/ Accused No.1 herein, and allow the above appeal.

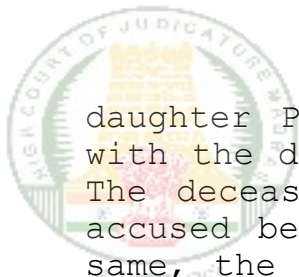
Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.I.PINAYGASH, Advocate for the petitioner in both the petitions and of Mr.S.RAVI, Counsel for Government of Tamil Nadu (Criminal Side) on behalf of the Respondent in both the petitions, the court made the following order:-

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

Since both appeals have been filed against the same Sessions Case, these petitions are taken up together for disposal.

2. The petitioner in Crl.M.P(MD)No.6792 of 2021 is the second accused whereas the petitioner in Crl.M.P(MD)No.6793 of 2021 is the first accused in S.C.No.460 of 2015 on the file of the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Thoothukudi. Both of them were found guilty for the offence under Section 302 I.P.C and sentenced to undergo imprisonment for life and pay a fine of Rs.5000/- (Rupees five thousand only) in default, to undergo simple imprisonment for six months. Challenging the conviction and sentence, the present appeals have been filed. Pending appeals, they seek suspension of sentence.

3. The case of the prosecution is that the deceased in this case one Subbammal is a deserted woman, who was living with her



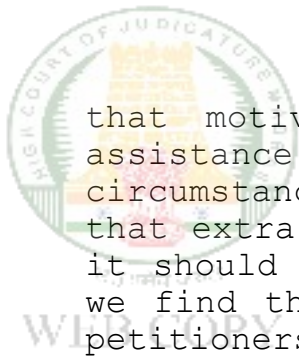
daughter P.W.2. The first accused in this case developed intimacy with the deceased and thereafter, there was a quarrel between them. The deceased is said to have given a complaint against the first accused before Pudukottai Police Station, being irritated over the same, the first accused decided to murder her with the help of the second accused. When the first accused tried to attack the deceased, she tried to escape and therefore, the second accused caught hold of the deceased and the first accused attacked her with a knife and caused death. On the next day, the second accused appeared before the Village Administrative Officer, P.W.3 and has given an extra judicial confession. Based on that, the second accused was arrested and remanded to judicial custody. Thereafter, the first accused surrendered before the learned Judicial Magistrate No.2, Palayamkottai. The trial court, after considering the oral and documentary evidence, convicted both the accused as aforesaid.

4. Mr.I.Pinaygash, learned counsel for the petitioners/accused 1 and 2 submitted that it is a case of circumstantial evidence and except extra judicial confession said to have given by the second accused, there is no evidence to prove the guilt of the accused. According to the learned counsel, the trial court, without considering the same, has convicted the petitioners/accused 1 and 2. The learned counsel would further submit that the petitioners have no bad antecedents and they are undergoing incarceration for the period of two years and therefore, seeks for suspension of sentence to the petitioners.

5. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State strongly opposing the bail application would submit that the deceased had illicit intimacy with the first accused, thereafter they have developed quarrel and the deceased has also given a complaint against the first accused, this is the motive for the occurrence. The second accused, who is a friend of the first accused, appeared before the Village Administrative Officer, and gave extra judicial confession and he was arrested. Thereafter, the first accused himself surrendered before the learned Judicial Magistrate No.2, Palayamkottai. The Trial Court, after considering the oral and documentary evidence in a proper perspective, rightly convicted the petitioners/accused 1 and 2. Considering the gravity of the offence, suspension of sentence need not be granted to the petitioner.

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

7. This is a case based on circumstantial evidence. First circumstance relied upon by the prosecution is the extra judicial confession given by the second accused before the Village Administrative Officer, Muduvaithanandal Village. Other circumstance pointed out by the prosecution is that the deceased is said to have given a complaint against the first accused and due to



that motive, the first accused attacked the deceased with the assistance of the second accused and caused death. Except these circumstances, no other circumstance is available. It is settled law that extra judicial confession is a very weak piece of evidence and it should be corroborated by other circumstances. Apart from that, we find there are arguable points available in the appeal and the petitioners are undergoing incarceration for more than two years and they are having no bad antecedents. Therefore, We find that, a *prima facie* case has been made out for grant of suspension of sentence.

8. Considering the above aspects, we are inclined to grant suspension of sentence. Accordingly, the Criminal Miscellaneous Petitions are 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 Sessions Judge, Magalir Neethimandram, Fast Track Court, Thoothukudi.

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/-
27/09/2021

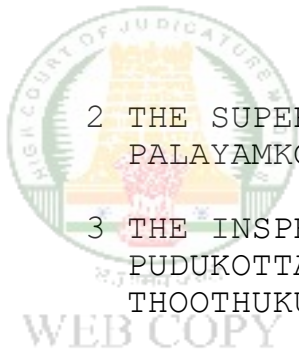
/ TRUE COPY /

/ /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 concerned.

TO

1 THE SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM,
FAST TRACK COURT, THOOTHUKUDI.



2 THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.

3 THE INSPECTOR OF POLICE
PUDUKOTTAI POLICE STATION,
THOOTHUKUDI DISTRICT.

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

ORDER IN
Crl.M.P. (MD) .No.6792 of 2021
in Crl.A. (MD) .No.52 of 2020
&
Crl.M.P. (MD) .No.6793 of 2021
in Crl.A. (MD) .No.503 of 2019
Date :27/09/2021

CM
MS/PN/SAR-4/28.09.2021/5P.5C