



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.01.2022
Pronounced on	27.01.2022

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CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

and

THE HON'BLE Ms. JUSTICE R.N.MANJULA

CrI.M.P.No.9801 of 2021

in

CrI.A.No.444 of 2021

Muniappan

... Petitioner/Appellant/Accused

Vs.

State rep.by
The Inspector of Police,
Uddanapalli Police Station,
Krishnagiri District.
(Crime No.404 of 2017)

... Respondent/Complainant

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed by the order passed against the petitioners in S.C.No.80 of 2019 on 13.08.2021 by the learned Sessions Judge (Fast Track Mahila Court), Krishnagiri and enlarge on bail pending disposal of the criminal appeal.

For Appellant : Mr.S.Saravanakumar

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



ORDER

R.N.MANJULA, J.

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This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner/accused in SC.No.80 of 2019 on 13.08.2021 by the learned Sessions Judge (Fast Track Mahila Court), Krishnagiri and to enlarge him on bail.

2. On facts, it is seen that the defacto complainant is the father of the deceased Bhuvaneswari; the said Bhuvaneswari and the accused were in love with each other and they married on 05.09.2010; thereafter, they lived at Chinnappampatty Village and had one son and daughter; the accused was having suspicion about the modesty of the deceased and because of that he continued to ill-treat her; on 19.11.2017 between 2 am to 6 am, when the deceased was sleeping at her house, the accused electrocuted her with livewire; when she got shock and perplexed, the accused strangled her with a white colour rope with an intention to murder her; Bhuvaneswari died due to suffocation and thus, the accused was charged for the offence under Section 302 IPC. With an intention to cause disappearance of the material object used for the offence, he threw away the orange colour electrical wire in a bush near south fence river area and thereby, he committed the offence of causing the disappearance of the evidence and thus charged for offence under Section 201 r/w 302 IPC also.

3. After the conclusion of the trial and on consideration of the evidence available on record, the learned Sessions Judge found the accused guilty and convicted and sentenced him on 13.08.2021 as under:-

<i>Provision under which convicted</i>	<i>Sentence</i>
302 IPC	Life Imprisonment and a fine of Rs.1000/- in default to undergo 6 months Rigorous Imprisonment

4. Challenging the above conviction and sentence, the Petitioner/Appellant/Accused has filed the Criminal Appeal. Pending the appeal, this miscellaneous petition has been filed seeking for suspension of sentence and to enlarge him on bail.

5. Heard Mr.S.Saravanakumar, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, Additional Public Prosecutor appearing for the respondent/complainant.



6. On receipt of the notice, the learned Additional Public Prosecutor appearing for the respondent State vehemently opposed to suspend the sentence and stated that the evidence available on record would strongly prove the involvement of the accused in the offence. He has further submitted that the learned trial Judge has appreciated the evidence in a proper perspective and the chances of getting a reversal judgment in the appeal filed by the petitioner/accused is less likely.

7. The learned counsel for the petitioner/accused submitted that the petitioner is innocent and there is no incriminating evidence against him. He has got substantial grounds for appeal and there is every likelihood to get a reversal judgment; there is no eye witness for the occurrence and the deceased was also not last seen by anyone; there are contradictions between the inquest report and the medical report available in this case; the witnesses were all interested witnesses and their evidence is not reliable; the learned trial Judge did not appreciate the evidence in a proper perspective and failed to give benefit of doubt in favour of the petitioner; hence, the sentence imposed against the petitioner/accused should be suspended and the petitioner/accused should be released on bail.

8. The accused is the husband of the deceased Bhuvaneswari. She was the daughter of the defacto complainant/P.W.1. As per the case of the prosecution, at the time of occurrence, there was no other person present at the house of the deceased except the couple. The learned trial Judge has recorded a finding that there are materials to show that the accused had a constant suspicion on the modesty of the deceased and because of that he was frequently fetching quarrel with her. It is observed that the accused was in a habit of manhandling his wife and in that connection, a police complaint has also been given and thereafter, the accused was advised to change his attitude. Since the accused is the husband of the deceased and the occurrence had taken place at his house, it is quite possible for the learned Sessions Judge to rule out the possibility of the involvement of any other person in the occurrence. The electrical wire which was used for electrocuting the deceased is a material object and that was also recovered and it stood as an important circumstantial evidence.

9. In this background, we find no conspicuous perversity in the judgment of the trial Court. It is to be noted that the admission of the appeal itself will not guarantee an automatic entitlement for suspending the sentence. The reasons to suspend the sentence has to be analysed only on a case to case basis. In the context of consideration of various aspects while considering the prayer to suspend the sentence, it is relevant to refer the judgment of the Hon'ble Supreme Court held in *Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)* [(2008) 5 SCC 230]. The Hon'ble Supreme Court has held as follows:



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"30. ... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

(emphasis supplied)

10. In the case in hand, the motive for the offence, the manner in which the offence had been committed, the relationship between the accused and the deceased and all other circumstances of the case would show that this case does not fall under the exceptional category in order to pass an order to suspend the sentence.

11. In view of the reasons stated above, we are not convinced to suspend the sentence and release the accused on bail. However, we would like to impress that it is always open to the learned counsel for the appellant to request for an early hearing of the appeal and for which, this Court would accommodate.

In the result, this Criminal Miscellaneous Petition in CrI.M.P.No.9801 of 2021 is dismissed.

-sd/-

27/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.



TO

1 THE SESSIONS JUDGE,
(FAST TRACK MAHILA COURT), KRISHNAGIRI.

2 THE JUDICIAL MAGISTRATE,
NO.II, HOSUR, KRISHNAGIRI.

3 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
UDDANAPALLI POLICE STATION,
KRISHNAGIRI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S. S.SARAVANA KUMAR Advocate on payment of necessary charges

Order
in
CRL MP.9801/2021
in
CRL.A.444/2021

Date :27/01/2022

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CSK 03/02/2022