



Crl.M.P.No.18641 of 2022
in Crl.A.No.1045 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.12.2022

ORDER PRONOUNCED ON : 19.12.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.M.P.No.18641 of 2022
in Crl.A.No.1045 of 2022

Kumar
S/o.Puttan

... Petitioner

Vs.

State by:
The Inspector of Police
Anthiyur Police Station,
Erode District.
(Crime No.241 of 2016)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Erode, made in S.C.No.85 of 2018 dated 30.11.2021 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.N.Ponraj
For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

N. ANAND VENKATESH, J.

This petition has been filed by the petitioner [A1] seeking for the suspension of sentence of imprisonment imposed by the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Erode, in S.C.No.85 of 2018, dated 30.11.2021.

2. The petitioner was convicted and sentenced as follows:

S.No.	Conviction for offence under	Sentence/Punishment
1	Section 302 IPC	Life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for two months.
2	Section 392 IPC	Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months.
3	Section 201 IPC	Seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months.

3. The case of the prosecution is that the deceased Ponnammal, aged about 86 years, used to lend money as hand loan and collect interest for her livelihood. The petitioner and one Loganathan [A2] also borrowed



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money from the deceased Ponnammal. The further case of the prosecution is that on 18.05.2016, at about 10.30 a.m., both the accused persons decided to do away with the deceased and to rob her gold jewellery. In continuation of the same, the accused persons went to the house of the deceased in a motorcycle and called the deceased as if they have come there to return back the money. The deceased was made to accompany the accused persons. The accused persons thereafter committed murder of the deceased and took away the gold jewellery that was worn by the deceased.

4. A complaint was given by the son-in-law of the deceased [PW-1] before the respondent police and initially, it was registered in Crime No.241 of 2016 as a woman missing case by PW-14 on 20.05.2016. In the course of investigation, PW-15, who was the Investigation Officer, recorded the statements of the witnesses and developed a suspicion against the accused persons. On 28.05.2016, the accused persons were arrested and based on their confession, the First Information Report was altered under Ex.P15 for offences under Sections 364, 302 and 379 IPC. On the



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admissible portion of the confession statement, the two-wheeler in which, the accused persons travelled, the gold jewellery and also the decomposed body of the deceased were identified. Based on the DNA report marked as Exs.P23 to 28, it was confirmed that the deceased was Ponnammal, who is the mother of PW-2.

5. The investigation was completed by PW-15 and a final report was filed against the accused persons for offences u/s.364, 392, 302 r/w 34 and 201 IPC.

6. The Court below, on considering the facts and circumstances of the case and on appreciation of the evidence, convicted the petitioner and sentenced him for the offences mentioned supra and acquitted Loganathan [A2] from all charges.

7. Heard Mr.N.Ponraj, learned counsel appearing on behalf of the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing on behalf of the respondent.



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8. The entire case of the prosecution is based on circumstantial evidence. The main circumstance that was relied upon by the prosecution was the last seen theory and to establish the same, the evidence of PW-1 and PW-9 were heavily relied upon. That apart, the prosecution also relied upon the discovery of fact based on the confession of the accused persons viz., the decomposed body of the deceased inside the forest.

9. PW-9 was the forest guard whose evidence becomes very vital in this case since he was examined by the prosecution to establish that he saw the deceased sitting in between A1 and A2 in the two-wheeler near the check post. PW-9 did not give any such statement to PW-15, who recorded the Section 161 Cr.P.C. statement and this was admitted by PW-15 in the cross-examination. Hence, the very identity of the accused persons through the evidence of PW-9 becomes doubtful. The Court below has given the benefit of doubt to A2 and it was contended that the same benefit of doubt ought to have been extended to A1 also.



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10. A further contention has been raised before us to the effect that the cause of death was not established by the prosecution to be a homicide. To substantiate the same, the evidence of the postmortem doctor PW-13 and the postmortem report marked as Ex.P10 and the opinion that was marked as Ex.P12 were brought to our notice.

11. Taking into consideration the facts and circumstances of the case and on carefully considering the materials available on record and submissions made on either side, we find that there are arguable points in this appeal. The petitioner has already suffered incarceration for more than a year. It will take some more time for this Court to take up the criminal appeal for final hearing.

In view of the above, this Court is inclined to suspend the sentence imposed by the Court below in S.C.No.85 of 2018 dated 30.11.2021 subject to the following conditions:-

- (i) The petitioner is directed to deposit the fine amount imposed by the Court below, if not already deposited;



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- (ii) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Erode;
- (iii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar cards or Bank passbooks to ensure their identity; and
- (iv) The petitioner shall appear before the respondent police every Monday at 10.30 a.m., for a period of 8 weeks. After completion of the said period, the petitioner shall report before the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Erode, on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

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Index : Yes/No,

[PNP., J]

[NAV., J]

19.12.2022



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Speaking order /Non-Speaking order

To

- 1.The Sessions Judge,
Magalir Neethimandram
[Fast Track Mahila Court],
Erode.
- 2.The Superintendent of Prison,
Central Prison, Coimbatore.
- 3.The Inspector of Police
Anthiyur Police Station,
Erode District.
(Crime No.241 of 2016)
- 4.The Public Prosecutor,
High Court of Madras.



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P.N.PRAKASH, J.
and
N. ANAND VENKATESH, J.

gm

Pre-delivery order in
Crl.M.P.No.18641 of 2022
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19.12.2022