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Crl.MP.No.19513 of 2022
in Crl.A.No.1288 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.19513 of 2022
in Crl.A.No.1288 of 2022

Vanitha

... Petitioner/sole accused

Vs.

State Rep. by

The Inspector of Police,
Karumalaikudal Police Station,
Salem District.
(Cr.No.410 of 2011)

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court, Mettur, dated 14.11.2022 in S.C.No.160 of 2013 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.M.G.Udayashankar
for M/s.S.Santhakumari

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For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused, by the learned Additional District and Sessions Judge, Fast Track Court, Mettur, in S.C.No.160 of 2013, by the judgment dated 14.11.2022, and enlarge her on bail pending disposal of the above Criminal Appeal.

2.The learned Additional District and Sessions Judge, Fast Track Court, Mettur, in S.C.No.160 of 2013, convicted the accused and sentenced her as follows:

Offence	Sentence Imposed
302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo 1 year RI
201 r/w 302 IPC	To undergo 7 years RI and to pay a fine of Rs.10,000/-, in default to undergo 1 year RI
The sentences imposed were directed to run concurrently.	



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3.Challenging the above conviction and sentence, the petitioner/accused, has filed the above Criminal Appeal and she seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.M.G.Udaya Shankar, learned Counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. It is the case of the prosecution that the petitioner is the wife of the deceased and out of the wedlock, a son by name Yuwan Santhosh was born; that on 04.01.2011, when the petitioner and the deceased were living as tenants, under one Paramasivan-PW5, the petitioner wanted to go to her mother's house, whereas the deceased wanted to go to his father's house and the deceased compelled the petitioner to come along with him; that the petitioner thereafter, left the child in her mother's house and came to the matrimonial home; that the deceased was in an inebriated condition and indulged in sexual intercourse with the petitioner; that thereafter, the deceased once again had bought liquor and asked the petitioner to drink and



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they once again indulged in sexual intercourse; that the deceased is said to have stated to the petitioner that *“he is imagining another girl in her place and wondering how it would be”* and thereafter, the quarrel started; that the deceased slept in the house; that enraged by the words the deceased, the petitioner tied the rope around his neck and caused death by strangulation; that she informed the neighbours and relatives that the deceased committed suicide; and thereby attempted to screen the evidence.

6. (i) The learned counsel for the petitioner submitted that the case was originally registered under Section 174 Cr.P.C., and thereafter, it was altered to offence under Section 302 IPC. He further submitted that though 54 witnesses were examined on the side of the prosecution, to prove their case based on circumstantial evidence, none of the circumstances have been established. There is absolutely no motive and the medical evidence belies the prosecution case. The conduct of the accused after occurrence also probablises the defence version and therefore, judgment of conviction is erroneous.



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(ii) The learned counsel further submitted that the accused is in custody since 14.11.2022 and prayed to suspend the sentence imposed on the petitioner/accused.

7. The learned Additional Public Prosecutor per contra submitted that the learned trial Judge has considered all circumstances and after elaborate discussion has convicted the petitioner; that there is no reason to doubt the finding of the trial Court; that in any event, the petitioner has not made out any case for suspension of sentence and hence, prayed for dismissal of the petition.

8. We have carefully considered the submissions of the learned counsel for the petitioner and the learned Additional Public Prosecutor and perused all the materials available on record.

9. (i) The case is based on circumstantial evidence. The petitioner was the wife of the deceased. It is the case of the prosecution that she has



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strangled the deceased with a rope, since the deceased is said to have uttered certain words while they were in an intimate physical relationship, which enraged her.

(ii) There is no other evidence let in by the prosecution to show that the petitioner and the deceased had a quarrel prior to the occurrence. PW1, father himself has not stated about any prior quarrel between the petitioner and the deceased. On the other hand, PW36, who was working along with the petitioner and the deceased as a teacher and the other witnesses, who knew both the petitioner and the deceased, have uniformly deposed that the petitioner and the deceased were living happily. There is absolutely no evidence as to what happened between the husband and wife on the date of occurrence. Therefore, the prosecution case that the deceased uttered some filthy words, which infuriated the petitioner, has not been established.

(iii) On the other hand, the witnesses state that PW1 was against the marriage of the petitioner with the deceased which was a love marriage as they both belonged to different communities and therefore, the deceased



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and petitioner had set up a separate matrimonial home and were living away from PW1.

10. The conduct of the petitioner/accused after the occurrence is also relevant, which probabilises the defence case. PW5 and PW6 are the landlords of the house, where the deceased and the petitioner lived. PW5, PW6 and their daughter-PW7 have stated that immediately after the occurrence, the petitioner went to the house of the landlords and cried for help. The petitioner was present throughout during the funeral of her husband and also subsequently.

11. That apart, the other important aspect in this case, is the evidence of PW28, the doctor who conducted postmortem on the deceased, who had stated that there was a faint ligature mark and the hyoid bone was intact. It is true that even in the case of strangulation, in certain cases, hyoid bone would be intact. However, the doctor had opined that the deceased died due to 2nd Grade-partial hanging. It is also seen from the evidence that the deceased was in an inebriated condition at the time of death.



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12. The occurrence took place in the house where the petitioner and the deceased lived. The petitioner also offered her explanation while she was questioned under Section 313 Cr.P.c., that on the fateful night after they had sexual intercourse, she and the deceased went to sleep; and that when she woke up, she found the deceased hanging with a dupatta. This explanation cannot be said to be false considering the other circumstances in the case. We are of the prima facie view that the prosecution has not established conclusively the circumstances relied upon by them. On the other hand, the evidence probabilise the defence version.

13. We also find a strange aspect in this case, where the prosecution examined 54 witnesses and the evidence of most of the witnesses examined are of no use either to the prosecution or to the defence.

14. Therefore, considering the above facts, the period of incarceration and that the appeal is not likely to be taken up for hearing in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioner herein.



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15. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/sole accused, is suspended on the following conditions:

- (i) 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 Additional District and Sessions Judge, Fast Track Court, Mettur;
- (ii) The petitioner and 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 card or Bank pass Book and mobile numbers to ensure their identity;
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if she is not able to appear before the trial Court on any day, she shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial



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Court on any other day in lieu of the date of her
absence, as directed by the trial Court.

(S.S.S.R., J.) (S.M., J.)
23.11.2023

Index : Yes / No

Note to office:

Issue order copy by 27.11.2023

Upload the order copy forthwith
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To

- 1.The Additional District and Sessions Judge,
Fast Track Court, Mettur.
- 2.The Inspector of Police,
Karumalaikudal Police Station,
Salem District.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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(2/2)

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