



WEB COPY



1

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

Tuesday, the First day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL MP(MD) No.5699 of 2023
in
CRL A(MD)No.283 of 2023

K.THANGARAJ @ THANGAM

... PETITIONER/ APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.256/2017)

... RESPONDENT/RESPONDENT

Criminal Miscellaneous 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 / Sole Accused against the Judgment in S.C No. 115 of 2017 dated 23.11.2022 on the file of the Honble Session Judge, Fast Track Mahila court, Virudhunagar District @ Srivilliputhur in Crime No.256 of 2017 on the file of the Respondent Police pending disposal of the instant Criminal Appeal on such terms and conditions as may be deemed fit.



PRAYER in CRL A(MD)No.283 of 2023:

WEB COPY

To call for the records of the Judgment in S.C.No.115 of 2017 dated 23.11.2022 on the file of the Hon`ble Session Judge, Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur and set aside the same and acquit the Appellant/Sole Accused.

Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.THIRUMURUGAN T, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

[Order of the Court was made by M.NIRMAL KUMAR, J.]

The petitioner/accused in S.C.No.115 of 2017, convicted by the learned Sessions Judge (Fast Track Mahila Court), Virudhunagar District @ Srivilliputhur. By judgment dated 23.11.2022, the trial Court convicted the petitioner under Section 364 I.P.C. and sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for six months; and also convicted him for the offence punishable under Section 302 I.P.C. and sentenced him



WEB COPY

to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for six months. Both the sentences were directed to run concurrently. Challenging the same, the petitioner/appellant is before this Court with this appeal. Pending appeal, he has come forward with this petition praying to suspend the substantive sentence of imprisonment.

2. The case of the prosecution is that, P.W.2 – Vasantha is the maternal aunt of the petitioner and wife of P.W.1/de-facto complainant. P.W.1 lodged a complaint stating that on 11.04.2017 at 08.00 a.m., his daughter namely, Selvi went in search of job for Nurse in Mary Jenova Hospital at Srivilliputhur, informed P.W.1, her father, about meeting the doctor and she would return back home at 01.00 p.m. However, she did not return to home. Thereafter, P.W.1 and his wife [P.W.2] were searching their daughter and came to know that a body was found near the graveyard of Madavarvalakam, where they found their daughter lying dead in a pool of blood. P.W.1 and P.W.2 doubted on the appellant, who had relationship with their daughter, which was objected by them, since it was a prohibitory relationship. Thereafter, P.W.1 gave a complaint to the respondent Police and a case in Crime No.256 of 2017 was registered, during investigation, the petitioner was arrested, who had given confession before P.W.4 Village Administrative Officer, admitting the guilt.



WEB COPY

2.1. Based on his confession, the material objects were recovered, the body was sent for postmortem. The postmortem report and the Doctor's evidence are inconfirmity with the prosecution case. Before the Trial Court, on the side of the prosecution, 12 witnesses were examined, 16 exhibits as well as 15 material objects were marked. The prosecution proved the chain of links confirming the guilt of the petitioner/accused.

2.2. The Trial Court based on the aforesaid oral and documentary evidence, convicted the petitioner as stated above.

3. The learned counsel for the petitioner contended that in this case, P.W.1, P.W.2 and P.W.3 are father, mother and uncle of the deceased, who state about the relationship between the petitioner and the deceased. As per the evidence of P.W.3, he went to the occurrence place after the arrival of P.W.1 and P.W.2 and thereafter to Police Station, denies the presence of the petitioner at the Police Station. On the other hand, P.W.1 and P.W.2 state that the petitioner was available at the Police Station. The other witness to connect the petitioner with the crime is P.W.5, who is projected as a witness to the last seen theory. P.W.5, a close relative of P.W.2, in his evidence, states that he saw the deceased along with the petitioner passing by in a motorcycle,

in his cross-examination, he admits he has not stated so to the Police, added to it,



P.W.5 admits that he went to the Police Station at 08.00 p.m. on 11.04.2017, not whispered about this vital fact, only after the arrest of the petitioner/accused on 12.04.2017, a improved version given. Hence, a contradicton in the evidence of P.W.5.

4. The learned counsel for the petitioner further submitted that the call detail register of the deceased and the petitioner/accused *viz.*, Exs.P.15 and P.16 marked through Investigating Officer before the Trial Court, the service providers, not examined and the exhibits not marked as per law and procedure. He further submits that the petitioner and the deceased were in friendly relationship, which is not denied, P.W.1 and P.W.2, the parents of the deceased had objection for the same and for this reason, the petitioner has been falsely implicated in this case.

5. The learned counsel for the petitioner further submitted that it is a case of circumstantial evidence and there is no evidence to show that the deceased and the petitioner were last seen together or the activities of the petitioner were found to be suspicious. Further, referring to the judgment of the Trial Court, the learned counsel for the petiitioner submitted that the Trial Court had given a wrong finding, that from Ex.P.14, it is proved the contact between the petitioner and the deceased established soon before the death of the deceased. Further, there is no iota of evidence of any

kidnapping or forceful abduction. There are lot of infirmities in the evidence, for



which the Trial Court, on its own, had given its reasoning.

WEB COPY

6. The learned counsel further submitted that the Trial Court convicted the petitioner only based on mere surmises and conjectures. In this case, there is no chain of evidence so as to lead to the only conclusion that the petitioner and none-else was the murderer of the daughter of P.W.1 and P.W.2.

7. The learned counsel for the petitioner further submitted that in this case, neither the Nodal Officer was examined nor a certificate under Section 65-B of the Indian Evidence Act, 1872 was produced before the Trial Court to prove the call details of the deceased and the petitioner. However, the Trial Court has placed reliance on Ex.P.14 wrongly, and convicted the petitioner.

8. The learned counsel also submitted that there are arguable points available in the Criminal Appeal and that the Criminal Appeal is not likely to be taken up for final hearing in the near future and that the petitioner has got a fair chance of succeeding in the Criminal Appeal and prayed that the substantive sentence imposed against the petitioner may be suspended.

9. The learned Additional Public Prosecutor submitted that in this case, the



WEB COPY

petitioner and the deceased were in prohibitory relationship, which was opposed by P.W.1, P.W.2 and P.W.3, the father, mother and uncle of the deceased, respectively. P.W.5, who is the cousin of the deceased, had seen the petitioner and the deceased together travelling in the bike.

10. The learned Additional Public Prosecutor further submitted that a marriage was arranged for the deceased with another person, which was objected by the petitioner, who had taken her to an isolated place and forced her to marry him. Since the deceased refused to marry him and keep away from any relationship with him, the petitioner/accused stabbed the deceased with knife [M.O.11]. P.W.5 seen the deceased and the petitioner/accused at the relevant time. P.W.9 along with P.W.12 conducting vehicle check, on 12.04.2017, on seeing the Police, the petitioner/accused attempted to flee, during enquiry, he gave contradictory versions and when he was further enquired, he admitted about the commission of the offence, which was recorded in the presence of P.W.4 Village Administrative Officer. P.W.12 during investigation, collected materials, prepared Observation Mahazar, Rough Sketch, recorded the statement of witnesses, conducted inquest, sent the body for postmortem and the postmortem report confirms the prosecution case. The Trial Court, based on the evidence of witnesses and the materials produced, had rightly convicted the petitioner as stated above. He further submitted that the petitioner can



raise all these points at the time of final hearing of the appeal and strongly opposed for granting suspension of sentence.

WEB COPY

11. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

12. Considering the aforesaid submissions, this Court finds that it is a case of circumstantial evidence and the chain of circumstances projected by the prosecution connecting the petitioner with the commission of the crime is of concern. In this case, the Trial Court had primarily convicted the petitioner based on the call records details [Ex.P.14], which is a wrong finding. Further, the call records have been marked through the Investigating Officer not through the Nodal Officers. Further, call records Ex.P.15 and Ex.P.16 are without 65-B Certification. The evidence of P.W.5 is without corroboration, which causes serious doubt over the prosecution case.

13. Considering the over all circumstances of the case and having regard to all the above facts, we are inclined to suspend the substantive sentence of imprisonment pending disposal of the appeal. Accordingly, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended



and the petitioner is directed to be enlarged on bail, on the following conditions:

WEB COPY

The petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge (Fast Track Mahila Court), Virudhunagar District @ Srivilliputhur, and on further condition that the petitioner shall report before the Trial Court on the first working day of every English calendar month at 10.30 a.m. until further orders.

sd/-

01/08/2023

/ TRUE COPY /

03/08/2023

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

smn2

TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, VIRUDHUNAGAR DISTRICT.
- 2 THE INSPECTOR OF POLICE
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



10

WEB.COM +1 CC to M/s.T.THIRUMURUGAN, Advocate (SR-11636[I] dated 01/08/2023)

ORDER
IN
CRL MP(MD) No.5699 of 2023
in
CRL A(MD)No.283 of 2023
Date :01/08/2023

SS//03/08/2023/10P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023