



CRL MP(MD) No.6030 of 2022

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

Wednesday, the Ninth 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.6030 of 2022

in

CRL A(MD) No.346 of 2022

ANGAMANI

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
VIRUVEEDU POLICE STATION,
DINDIGUL DISTRICT.
(IN CRIME NO.72/2012).

... 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 passed by the Learned Fast Track Mahila Court, Dindigul in S.C. No.159 of 2017 dt.14/3/2022, pending disposal of the Criminal Appeal.

Prayer in CRL A(MD).346/2022 :

To calling for the records pertaining to the conviction and sentence passed in S.C.No.159 of 2017 on the file of the Learned Fast Track Mahila Court, Dindigul, dated 14.03.2022 and set-aside the same as illegal and acquit the Appellant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.SIVABALAN K, 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.)

<https://www.mhc.tn.gov.in/judis> This criminal miscellaneous petition has been filed seeking to suspend the



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sentence imposed on the petitioner by judgment and order dated 14.03.2022 passed in S.C.No.159 of 2017 on the file of the Fast Track Mahila Court, Dindigul, and to enlarge the petitioner/ A2 on bail pending disposal of the above appeal.

2.The petitioner, is arrayed as A2, in S.C.No.159 of 2017 before the Fast Track Mahila Court, Dindigul, vide judgment dated 14.03.2022, was convicted for the offence under Section 364 r/w 34 IPC and sentenced to undergo ten years rigorous imprisonment and to pay fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.

3.Challenging the aforesaid conviction and sentence, the petitioners have filed Crl.A.No.346 of 2023 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4.Heard Mr.K.Sivabalan, learned counsel for the petitioners and Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent/State.

5.It is the case of the prosecution that one Parameswari, who is the daughter of P.W.1 and P.W.2, was in friendly terms with A1, which was not to the liking of P.W.1 and P.W.2. While so, on 04.07.2012, during the temple festival in the village, in the midnight, it is alleged that the deceased was taken by A1 and A2 in the motorbike belongs to A1 to a secluded place, which was seen by P.Ws.6, 7 and 9 and others in



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the village. Since the deceased did not return home, a complaint has been preferred by P.W.1 and P.W.2 to the respondent police on 06.07.2012.

6.It is the further case of the prosecution that in the meanwhile, the Village Administrative Officer/P.W.16 found a dead body with cut injuries and hence, P.W.16 lodged a complaint, which was registered by P.W.20, the Investigating Officer. Subsequently, it is revealed that the deceased is that of the daughter of P.W.1 and P.W.2. Upon getting information that the deceased was accompanied by the accused persons, they were arrested in the presence of P.W.12. On the confession of A1, the motorbike and the knife apart from the jewels worn by the deceased were recovered from the scene of occurrence in the presence of P.W.17. On conclusion of trial, the petitioner was convicted and sentenced as narrated hereinabove along with A1.

7.The contention of the learned counsel for the petitioner is that the offence against the petitioner is only under Section 364 r/w 34 IPC, ie., the allegation of kidnapping. He would further submit that admittedly, no recovery whatsoever has been made at the instance of A2. It is his further case that A2 is owning an auto and A1, being an auto driver used to hire the auto of A2 and except that, there is no other relationship between A1 and A2. The trial Court has convicted the petitioner/A2 solely on the ground of last scene theory based on the evidence of P.Ws.6,7 and 9.



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P.W.6, in his evidence, has deposed that during temple festival, he had seen A1, A2 and the deceased travelling in a motorbike, further he was informed by P.W.9 that he dropped A1, A2 and the deceased near Anaipatti in his Auto, the evidence of P.W.7 on the same lines of P.W.6 to the extent of seeing A1, A2 and the deceased proceeding in a motorbike. However, P.W.9 stated that he had seen the accused along with the deceased in a two wheeler, which is contradictory to the earlier statement made by him and hence, the same cannot be believable.

8.It is further contended that P.W.6 and P.W.7 in their statement before the police not stated about the fact that the accused and deceased travelling in a motorbike. Likewise, P.W.9 had stated that A2 got down from the motorbike and thereafter, A1 and the deceased alone proceeded in the motorbike. Referring to the trial Court judgment, the learned counsel submitted that the trial Court had not made any reference about this part of the evidence and contradictions. On the contrary positive evidence available in favour of petitioner and there is no material to link the petitioner with the alleged offence, the learned counsel prays for suspending the sentence.

9. However, the learned Additional Public Prosecutor submitted that it is a case of murder for gain. The deceased was friendly with A1 and taking advantage of the same, on the fateful day, the deceased accompanied A1 and A2 in the motorbike and



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the accused persons took her to a secluded place and after committing the murder, they had taken away her jewels and hence, it is a case of murder for gain. P.W.16 the Village Administrative Officer, finding the body in an isolated place with injuries, lodged a complaint. Thereafter the instant case was registered. From the statement of the witnesses, the accused were arrested and on the confession of A1, the material objects were recovered including the jewels worn by the deceased. He further submitted that as regards this petitioner is concerned, P.W.1, P.W.2 and other witnesses have categorically stated that when they went in search of the deceased, A1 as well as this petitioner were not available in their respective houses and this petitioner was arrested along with A1 on 07.07.2012. Therefore, it is clear that A1 and A2 were together from 04.07.2012 to 07.07.2012. It is his further contention that the points urged before the trial Court were disbelieved by the trial Court and hence, the trial Court proceeded to convict the accused persons. For these reasons, the learned Additional Public Prosecutor prays for dismissal of this application.

10. It is a case of circumstantial evidence. Admittedly, the petitioner was convicted for the offence under Section 364 r/w 34 IPC. It is not the case of the prosecution that it is a case of forcible kidnapping. It is the version of P.W.1 and P.W.2 that the deceased was in friendly terms with A1 and hence, it is culled out from their evidence that A1, A2 and the deceased are known persons hailing from the



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same village. Further, there are vital contradictions in the evidence of P.Ws.6,7 and 9, which is admitted by P.W.20, the investigating officer. As regards the positive evidence that in the earlier statement made by P.W.9, that petitioner/ A2 got dropped, thereafter only A1 and the deceased proceeded further is admitted by P.W.20 the Investigation Officer. The occurrence had taken place after A2 got dropped. From the judgment of the trial Court, it is seen that except extracting the evidence of P.Ws.6,7 and 9, there is no discussion on the evidences and there is no reasons given for convicting the petitioner herein. For all these reasons, the petitioner is entitled for the relief of suspension of sentence.

11. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner 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 Fast Track Mahila Court, Dindigul.



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(ii)
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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 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.

sd/-
09/08/2023

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11/08/2023

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

RR

TO

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

+1 CC to M/s.K.SIVABALAN, Advocate (SR-12050[I] dated 09/08/2023)

ORDER IN
CRL MP(MD) No.6030 of 2022
in CRL A(MD) No.346 of 2022
Date :09/08/2023

RS//SAR-(11.08.2023) 7P 6C

Madurai Bench of Madras High Court is issuing
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