



CRL MP(MD) No.9462 of 2023

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

Monday, the Twenty Eighth 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.9462 of 2023
and
CRL A(MD) No.428 of 2023

SELVI

... Petitioner / Appellant

Vs

STATE REP BY
THE INSPECTOR OF POLICE
AVIYUR POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(IN CRIME NO.177 OF 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 imposed by the Court of Additional District and Sessions Judge, Virudhunagar in S.C.No.63/2018 on 24.03.2023 and release the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD) No.428 of 2023:

To call for the records and set aside the conviction and sentence imposed

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by the Court of Additional District and Sessions Judge, Virudhunagar in S.C.No.63 of 2018 on 24.03.2023 and allow this Criminal Appeal.

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.JOTHI BASU M, Advocate for the petitioner and of Mr.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by M.S.RAMESH, J.]

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner, by judgment dated 24.03.2023, passed in S.C.No.63 of 2018, on the file of the Additional District and Sessions Judge, Virudhunagar, and to release the petitioner on bail pending disposal of the above appeal.

2. The case of the prosecution is that on 29.09.2017 at 2.00 a.m., the first accused had murdered the deceased Chellapandi, who is her husband, by throwing a Grinder stone on his head, while he was sleeping. The deceased had died due to the head injuries. The prosecution has attributed a motive on the first accused by stating that the deceased had been suspecting the first accused of having an illicit intimacy with the second accused.

3. The trial Court had found the second accused as not guilty for the offence

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under Sections 302 r/w 34 and 202 r/w 302 IPC and accordingly, acquitted him.

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The first accused was found guilty for the offence under Section 201 r/w 302 IPC, as well as for the offence under Section 302 IPC and sentenced her to life imprisonment.

4. The learned counsel for the petitioner submitted that the entire case of the prosecution is based on circumstantial evidence and during the occurrence, there is no evidence to link the presence of the deceased along with A1. Furthermore, the learned counsel for the petitioner also doubted the recovery made by the Investigation Officer. By pointing out to the testimony of the Investigation Officer-P.W.20, he stated that the recovery of the bloodstained cloth and M.O-2 was 100 mts away from the house of the accused. Whereas, it is the clear case of the prosecution that the incident had occurred inside the house of the accused.

5. Per contra, the learned Additional Public Prosecutor submitted that there was clear evidence for motive of the illicit intimacy of the first accused with the second accused, owing to which the first accused had committed the crime. He further stated that in view of Section 106 of the Indian Evidence Act, it is the duty of the accused to explain and substantiate that the incident did not take place inside the house of the accused and having failed to do so, the judgment of the trial Court cannot be found fault with.

6. The entire case of the prosecution rests on circumstantial evidence. From



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the testimony of all the prosecution witnesses, it is seen that the presence of the deceased along with A1 was established only after 8.00 a.m., on 29.09.2017. It is the testimony of P.W.5 that he along with the deceased had gone to consume liquor on the previous day at 5.00 p.m. to 6.00 p.m. After 6.00 p.m., P.W.5 alone had returned home with a sum of Rs.16,000/-, which the deceased had given to him. After reaching home, P.W.5 had sent back the money through his son Balamurugan for handing over it to the deceased. It is also the statement of P.W.5 that the amount was handed over to Chellapandi. He would further state that A1 had come to his house in the morning on 29.09.2017 at 6.00 a.m., for seeking return of Rs.16,000/- and when he told her that the amount was already returned back to Chellapandi through his son, she had left. When he later realised that Chellapandi had inturn handed over the money to Packialakshmi-P.W.7, he had once again gone to the house of the deceased, when he found the first accused was sitting outside her house. He then informed her about the money being handed over to P.W.7. At this juncture, when he had questioned the whereabouts of the deceased, A1 had specifically told him that the deceased had not returned back home after the earlier night. It is also the case of P.W.4 that the first accused had informed her about the death of the deceased at 8.00 a.m., by stating that somebody had murdered him and put the body inside her house.



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7. The trial Court had acquitted A2, predominantly on the ground that there was no evidence before it to substantiate the common intention between A1 and A2, to commit the crime. It was also found that the Investigation Officer had not provided the call details to link the first accused and second accused for plotting the crime.

8. This apart, we have taken into consideration that none of the witnesses have spoken about the presence of the first accused in the house along with the deceased on the earlier night. The testimony of P.W.5 reveals that the first accused had informed him that the deceased had not returned back the earlier night. In the case of circumstantial evidence, the circumstances leading to presumption that the accused alone had committed the crime, should be well established and proved beyond any doubt, together with linking the entire episode through a chain of events.

9. On a prima facie view, there is a gap in the chain of events with regard to the presence of the deceased person in A1's house at the time of occurrence and even much prior to that. Hence, the presence of A1 along with the deceased has become highly doubtful.

10. This apart, it is the statement of P.W.5 that he along with the deceased had consumed alcohol on the earlier day i.e., on 29.09.2017 between 5.00 p.m. and 6.00



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p.m. However, the postmortem doctor (P.W.17) in his testimony, as well as in his report, had found that there was no alcohol content in the stomach of the deceased.

This circumstance also creates a doubt. These aspects could be deliberated during the course of the final arguments. However, since the petitioner has made out a prima facie case, she would be entitled for the relief of suspension of sentence.

11. In the affidavit filed in support of the present petition seeking for suspension of sentence, the petitioner had stated that she is a mother of a 16 years old disabled child, who is dumb and of unsound mind. We have also taken this aspect into consideration for the purpose of ordering suspension of sentence.

12. 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.10,000/-, 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, Virudhunagar.

(ii) The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal and if she is not able to appear before



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

sd/-

28/08/2023

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30/08/2023

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

VSM

To

- 1.The Additional District and Sessions Judge,
Virudhunagar.
- 2.The Inspector of Police,
Aviyur Police Station,
Virudhunagar District.
- 3.The Superintendent,
Central Prison for Women,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-12867[I] dated 28/08/2023)



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ORDER
IN
CRL MP(MD) No.9462 of 2023
and
CRL A(MD) No.428 of 2023
Date :28/08/2023

ED/ /SAR- (30/08/2023) 8P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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