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

Tuesday, the Thirtieth day of April Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA
and
The Hon`ble Mr.Justice K. RAJASEKAR

CRL MP(MD) No.17270 of 2023
in
CRL A(MD)No.1082 of 2023

JOHN

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
NITHIRAVILAI POLICE STATION,
KOLLENCODE,
KANYAKUMARI DISTRICT.
(CRIME NO.112/2009).

... 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 learned Sessions Fast Track Mahila Camp Court, Kanyakumari at Kuzhithurai in SC No.121/2011 dated 25/10/2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.1082 of 2023:

To call for the records and set-aside the conviction and sentence imposed by the learned Sessions Fast Track Mahila Camp Court, Kanyakumari at Kuzhithurai in SC No-121/2011 dated 25.10.2023 and enlarge the Petitioner on bail pending disposal of the Criminal Appeal.



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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 Mr.M.R.SREENIVASAN, Advocate for the petitioner and of Mr.R.MEENAKSHISUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The case of the prosecution is as follows:

(I) The petitioner married the deceased 11 years prior to the occurrence and also begot a daughter and a son. The younger sister of the deceased by name Geetha married one Vijil @ Vijayan of Iyrenipuram and after the death of the said Vijil @ Vijayan, the said Geetha started to live with her sister the deceased. Since, the petitioner/A1 was very much affectionate to the said Geetha, petty quarrels happened in between the deceased and her sister. Since, the deceased was quarrelling with her sister Geetha, the petitioner/A1 also quarreled with the deceased. Since, the petitioner/A1 harassed his wife, on 15.10.2008 she also lodged a complaint against the petitioner before the respondent police station and the police



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also enquired the matter and warned the petitioner. So, the petitioner with an intention to marry the said Geetha and he decided to do away his wife. On 27.07.2009 at about 08.30 p.m., when the petitioner and the said Geetha were watching T.V., the deceased brought her children from tuition and on arrival at home, the deceased picked up quarrel by asking her daughter why she gave the egg got from the nutrition scheme to her sister. So, the petitioner took his wife to another room and taking advantage of the volume of the T.V with an intention to kill her, leaning her against the wall and strangled her and due to the same, she fainted and died. After that to conceal the murder of his wife, he has consulted the A2 and A3 and they advised him to bury the deceased's body without intimating to the police station by stating that she died consuming poison. A2 and A3 also assisted the petitioner to conceal the murder and also to destroy the evidence. Thereafter on intimation received from the local people to P.W.1, the Village Administrative Officer made a complaint before the respondent police on 29.07.2009 and on the basis of the complaint made by the Village Administrative Officer, the respondent police has registered a case as against the petitioner in Cr.No.112/2009 for offences under Sections 302, 176, 201 of IPC.

(ii) The respondent police after investigation filed charge-sheet as against the



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petitioner and two other persons for the offences under Sections 302, 176, 201 of IPC and it was taken on file PRC No.20/2009 on the file of the Judicial Magistrate Court No.II, Kuzhithurai. Thereafter the case was committed to the Sessions Court and taken on file as S.C.No.121/2011.

(iii) On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the Trial Court, after hearing the accused, framed a charge for the offence under Section 302, 176, 201 against the accused.

(iv) When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 30 witnesses and marked 25 exhibits and 02 material objects. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

(v) By judgment and order dated 25.10.2023, the Trial Court found the accused guilty for the offence under Sections 302 I.P.C, 201 r/w 302 and convicted and sentenced him, as detailed below:-



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Section of Law	Sentence of imprisonment	Fine amount
302 I.P.C.	To undergo life imprisonment.	Rs.5,000/-, in default to undergo six months simple imprisonment.
201 r/w 302 I.P.C.	Three years Rigorous Imprisonment	Rs.1,000/- in default to undergo three months simple imprisonment

2. Challenging the said conviction and sentence, the accused has filed an appeal in CrI.A.(MD) No.1082 of 2023 and pending the appeal, he has filed the above miscellaneous petition seeking to suspend the sentence imposed on him.

3. Learned counsel for the petitioner would submit that the prosecution case came to be set in motion based on the complaint/Ex.P.1 given by P.W.1/Village Administrative Officer of Eluthesam village that one Laser, S/o.Cheriyar has given information regarding the murder of the victim and her subsequent burial. However the said Laser who is said to have given information has not been examined in this case. Further P.W.2 and P.W.3 who are stated that to be eye witnesses and also present at the place of occurrence have not supported the prosecution case. No evidence has been let in by the prosecution to prove that the



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accused^s was present in the house at the time of occurrence. He would further submit that though no poison has been detected in the viscera, the medical evidence is not conclusive as to the cause of death. When the prosecution has failed to prove the presence of accused in the house at the time of occurrence the trial Court erred in shifting the burden on the accused and convicting him. Further the petitioner's daughter is ripe for marriage and the petitioner has to come out and arrange for marriage of his daughter. There are also several other grounds in the appeal and the likelihood of the appeal being taken up for final hearing in the near future is also not possible, thereby he prayed for suspension of sentence.

4. Learned Additional Public Prosecutor appearing for the respondent - Police would submit that the petitioner is the husband of the deceased and he had intended to marry the P.W.3, who is the sister of the deceased, thereby he murdered his wife by strangulation. Later, in order to screen the evidence he along with accused Nos.2 & 3 buried the body without informing to the police and the body was exhumed after 5 days. Since the body was exhumed after four days it was found in decomposed stage and thereby the doctor was unable to give conclusive opinion. P.W.2 and P.W.3 are close relatives of the petitioner as well as the deceased and thereby they have not supported the case of prosecution. In this case the death



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had occurred within the house and since the accused had after the occurrence absconded and no probable explanation has been given by him, the trial Court had found him guilty and convicted him, thereby he would oppose for grant of bail

5. Heard the learned counsel on either side and perused the materials available on record.

6. A careful perusal of the materials available on record shows that one Laser, Son of Cheriyan is said to have informed the P.W.1-Village Administrative Officer that the accused had murdered his wife and buried her, but the said Laser has not been examined. Further, P.Ws.2 & 3, who are stated to be the eye witnesses, have also not supported the case of the prosecution and no evidence has been let in by the prosecution to prove the presence of the accused in the house at the time of occurrence and the medical evidence is also not conclusive regarding the cause of death. It is stated that the petitioner is in incarceration for the past five months. Therefore, taking into consideration the facts and circumstances of the case and also the fact the petitioner has to arrange for marriage of his daughter, we are inclined to suspend the sentence imposed on the petitioner by the Trial Court.



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7. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioner herein is suspended, subject to the following conditions:

- i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Trial Judge.
- ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.
- iii. The petitioner shall report before the trial Court on the first working day of every English Calendar month at 10.30 am., until further orders.

sd/-
30/04/2024

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30/04/2024
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

AM/AAV
TO

1 THE SESSIONS FAST TRACK MAHILA CAMP JUDGE,
KANYAKUMARI AT KUZHITHURAI.



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2 THE INSPECTOR OF POLICE
NITHIRAVILAI POLICE STATION, KOLLENCODE,
KANYAKUMARI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-5168[I] dated 30/04/2024)

ORDER
IN
CRL MP(MD) No.17270 of 2023
in
CRL A(MD)No.1082 of 2023
Date :30/04/2024

SS/SAR- /30/04/2024/9P/6C

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