



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

Wednesday, the Twenty Eighth day of July Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.4322 of 2021
IN
CRL A(MD) No.312 of 2020

MARTIN MONTRIQUE MANSOOR ... PETITIONER/APPELLANT/ACCUSED

Vs

STATE REP BY
THE INSPECTOR OF POLICE
THIRUNAGAR POLICE STATION,
CRIME NO.173/2012. ... RESPONDENT/RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the execution of sentence imposed against the Petitioner/ Appellant/ Accused in S.C No. 109/2013 dated 11.09.2020 on the file of Mahila Neethimandram Madurai and order to release him on bail pending disposal of the appeal.

PRAYER IN CRL A(MD) .312 OF 2020

To take this appeal on file, call for records from the Lower court in S.C.No.109/2013 on the file of Mahila Neethimandram, Madurai hear both sides and allow the appeal by setting aside the Judgment and conviction and sentence imposed against the appellant/accused and order to acquit the appellant/accused from the charges.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, LEARNED SENIOR COUNSEL for M/S.K.PRABHU., Advocate for the petitioner and MR.S.RAVI, STANDING COUNSEL FOR THE STATE, the court made the following order:-

[Order of the Court was made by B.PUGALENDHI, J]

The petitioner / accused is found guilty by the learned Sessions Judge, Mahila Court, Madurai in S.C.No.109 of 2013, dated 11.09.2020 for the offence punishable under Section 302 IPC, is



convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- with default class. The petitioner is also found guilty for the offence under Section 201 IPC, convicted and sentenced to pay a sum of Rs.5,000/- with default class. As against the conviction and sentence of the trial Court, the petitioner has preferred the above criminal appeal in Crl.A(MD)No.312 of 2020 and pending appeal, moved this application for suspension of sentence.

2.The case of the prosecution is that the accused and the deceased are Mexican nationals and they lived together as sentimental partners from the year 2003 and on account of that, the deceased became pregnant and delivered a female child by name Adela. There was some misunderstanding between the deceased and the accused and proceedings were also initiated before the Court at Mexico, wherein the custody of the child Adela was ordered to be given to the petitioner and the deceased each for one year and four months. The accused came to India for doing research in Mathematics and doing post doctoral research in Kalasalingam University at Virudhunagar District. The accused was residing in the staff quarters of the said University with his daughter. His daughter Adela was aged about 6 years old and was studying LKG in a Matriculation Higher Secondary School during the relevant point of time. The deceased also came to India in the year 2011 to study Mohiniattam in Kalamandalam University, Chenthuruthi, Kerala State. While so, the deceased used to visit the accused once in 15 days to meet her daughter. On 04.04.2012, the deceased came to the accused's house and stayed upto 09.04.2012. On 09.04.2012, there was a quarrel between the deceased and the accused on the custody of the child and the accused, who was under the impression that the deceased would separate his daughter from him, caused injury on the left thigh with a knife, broken her right wrist bone and dashed her head on the floor. Consequently, she died. To conceal the dead body, the accused took up the body in a suitcase and burnt the dead body with the suit case in Austinpatti, Madurai District.

3.On the complaint of the Village Administrative Officer, Austinpatti [PW1] the case was registered on 11.04.2012 at 8.00am. The police found the spare part of a car (gearbox cover - M05) in the place of occurrence and identified the same as that of a Ford car, arrested the accused on 17.04.2012 and recovered the accused's car bearing registration No.TN 01 Z 4389 [MO2] and a knife [MO3] pursuant to his confession statement. In conclusion of the trial, the trial Court found the petitioner guilty, convicted and sentenced as stated above.

4.Mr.V.Kathirvelu, learned Senior Counsel appearing for the petitioner submitted that the petitioner is a research scholar and doing his research fellowship in Mathematics at Kalasalingam University in Virudhunagar District and he has been unnecessarily roped in as accused in this murder case. He

<https://www.mca.gov.in/> that there is no direct evidence for the alleged



commission of offence and the trial Court convicted the petitioner based on certain circumstances. He would further submit that there is no motive for the petitioner as against the deceased and no motive is established. However, the trial Court on presumption that there was motive for the petitioner on the custody of the child, has held that motive was established by the prosecution.

5.The learned Senior Counsel further submitted that the trial Court has also considered the evidence of PW16 and PW17, the Security Officers in the Kalasalingam University that the accused left the University on 10.04.2012 at 9.00am and returned in a car in the midnight at 01.00am. Even this circumstance has not been established by the prosecution by recovering any registers from the University. Moreover, the said security officers were examined on 28.06.2012 after two months and they have stated the time at which, the accused returned to the quarters. However, the very same witnesses, during their cross examination, admitted that the accused used to return to the quarters at midnight on earlier occasions also. But they did not remember the time at which, the accused returned on the earlier occasions. The learned Senior Counsel pointed out that the statement said to have been recorded on 28.06.2012 from the witnesses reached the court only on 14.09.2012 and therefore, this a concocted story to rope in the petitioner as an accused.

6.Insofar as the next circumstance, the trial Court placing reliance on the spare part of a car [MO5] recovered from the place of occurrence is concerned, the learned Counsel relied on the evidence of Sekaran [PW11] that MO5 cover a gear box is available in all the Ford cars and the prosecution has not established that the gear box of the car was missing from the car [MO2] recovered from the petitioner and the recovered gear box [MO5] from the place of occurrence belongs to the said car.

7.The learned Senior would further submit that certain tyre marks were identified from the place of occurrence and the same were also compared with the petitioner's car tyres, but they were not tallied with the petitioner's car. Therefore, these are all weak piece of circumstances, which do not have any connectivity with the petitioner, but the trial Court without considering the same, found the petitioner guilty and convicted on presumption and assumption. This petitioner has been languishing in prison for more than eight months.

8.Per contra, Mr.S.Ravi, learned Standing Counsel appearing for the State submitted that the deceased Cecile Denise Acosta Reynaud was a Mexican national and he was in live in relationship with the petitioner for sometimes and they are having a child Adela. From the year 2011, they were living separately due to some misunderstandings and they were having dispute with regard to the custody of the child also. Under these circumstances, the deceased was found dead on 11.04.2012 near Austinpatti in Madurai District. The gear box [MO5]



was recovered from the place of occurrence. During the cross examination, the Security Officers in the Kalasalingam University have stated that the accused left the quarters on 10.04.2012 at 09.00am, returned on the next day at 1.00am and the gear box is pertaining to the Ford car, which was also recovered from the petitioner along with the knife. Therefore, the available circumstances, make out the guilt on the petitioner and the trial Court has rightly found the petitioner guilty, convicted for the offence and the points raised by the petitioner can be raised only during the final hearing.

9. This Court paid its anxious consideration to the rival submissions and perused the materials placed on record

10. The petitioner is a research scholar and working as a Mathematics professor at Kalasalingam University, Virudhunagar University and he has been in prison from 11.09.2020. The prosecution has relied on certain circumstances, as against this petitioner and the trial Court convicted the petitioner based on those circumstances.

11. The case of the prosecution is that there was dispute between the petitioner and the deceased on the custody of their child Adela. On 09.04.2012, when the deceased was staying with the accused, quarrel arose between them on the custody of the child and the deceased is said to have slapped the accused. The accused under the impression that she would separate her daughter from him inflicted an injury on her thigh, broken her right wrist and also smashed her head on the floor. Thereafter, he is said to have concealed the body in a suit case, disposed off the same near Austinpatti at Madurai. However, as per the postmortem certificate and as per the evidence of the Doctor [PW23], who conducted postmortem, there is no corresponding injury in the thigh, wrist and on the head, as projected by the prosecution. The other circumstances relied on by the trial Court as to the evidence of PW16 and PW17 Security Officers of Kalasalingam University are concerned, they have stated that the accused left the University quarters on 10.04.2012 at 9.00am and returned on the next day at 1.00am. But those witnesses were examined on 28.06.2012, after a period of three months from the date of occurrence and their statements were despatched to the Court only on 14.09.2012. As pointed by the learned Senior Counsel for the petitioner, no records were maintained by the Security Officers and they have also admitted in the cross examination that the accused used to come often in the midnights and they could not mention the time of arrival of the accused for those days. Therefore, this is also a weak piece of evidence relied by the trial Court.

12. Regarding other circumstance relied on by the trial Court with regard to the recovery of gear box [MO5] from the place of

<https://www.crlmp.in/cds/>

PW21 in his evidence has stated that the spare part



[M05] would be available in all the Ford cars. Apart from the recovery of M05, the investigating agency has also found certain tyre marks from the place of occurrence, where the body of the deceased was found and recovered. These tyre marks were taken for comparison by plaster of Paris and analysed. The expert gave his opinion that in ExP14, the tyre mark impressions created by the vehicle found near the scene of occurrence, did not tally with the tyre marks of the car [M02], which were recovered from the accused and this opinion of the PW13 also raises certain doubts in fixing the petitioner as accused. Though the investigating agency collected call details and the same were not established before the trial Court

13. Since the petitioner has made certain arguable points in his favour and this Court is inclined to suspend the substantive sentence of imprisonment imposed on the petitioner, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten 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 Sessions Judge, Mahalir Neethimandram, Madurai.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Court may obtain a copy of their Aadhar Card or Bank passbook to ensure their identity.

iii. The petitioner shall report before the learned Sessions Judge, Mahalir Neethimandram, Madurai at 10.30 a.m. on the first working day of every month, until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to her to file application under Section 317 Cr.P.C. and appear before the trial Court on any other day, as determined by the trial Court, in lieu of the day on which he would absent.

14. In fine, this criminal miscellaneous petition stands allowed.

sd/-
28/07/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE SEESIONS JDUGE,
MAHALIR NEETHIMANDRAM, MADURAI

2 THE SUPERINTEDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

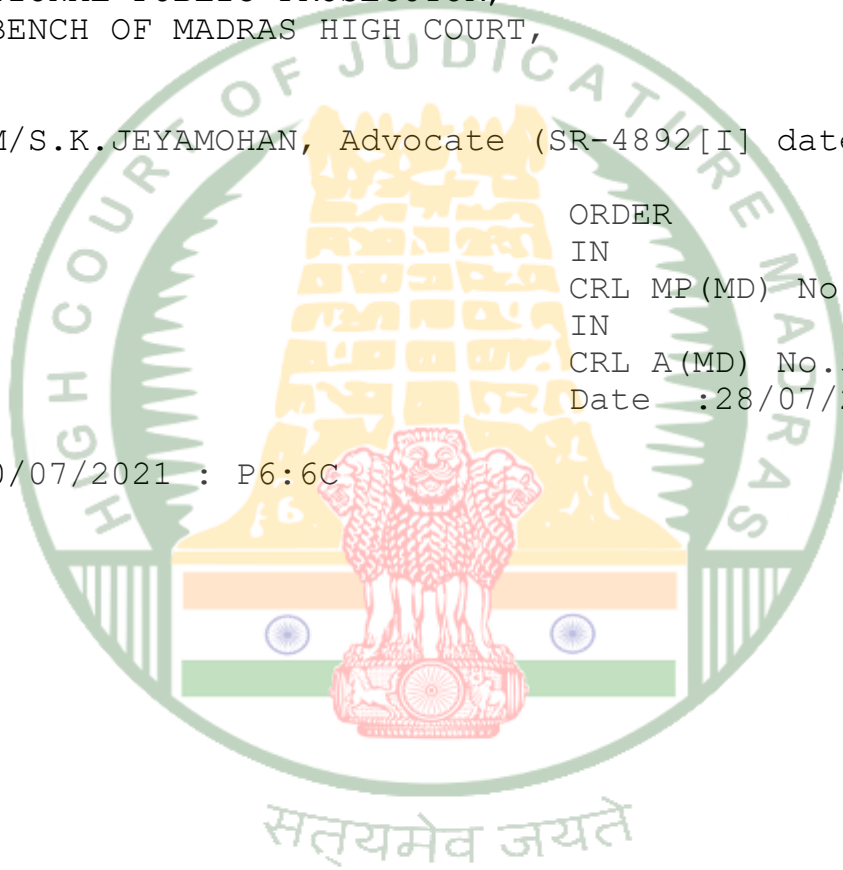
3 THE INSPECTOR OF POLICE
THIRUNAGAR POLICE STATION,

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

+1CC to M/s.M/S.K.JEYAMOCHAN, Advocate (SR-4892[I] dated 28/07/2021)

ORDER
IN
CRL MP(MD) No.4322 of 2021
IN
CRL A(MD) No.312 of 2020
Date :28/07/2021

NA/JC/SAR1/30/07/2021 : P6:6C



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