

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Thursday, the Twenty Seventh day of June Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.914 of 2018

in CRL.A.No.47 of 2018

GUNASEKARAN

[ PETITIONER / APPELLANT ]

Vs

STATE BY

[ RESPONDENT ]

INSPECTOR OF POLICE,  
SANKARAPURAM POLICE STATION,  
SANKARAPURAM,  
VILLUPURAM DISTRICT.  
CRIME NO.6 OF 2016

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.47 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the judgment dated 18.01.2018 made in SC No.345 of 2016 on the file of the III Additional District and Sessions Judge, Kallakurichi and enlarge the petitioner on bail

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.47 of 2018 on the file of the High Court and upon hearing the arguments of M/S.R.ARUN DATTAN, Advocate for the petitioner, and of MR.R.PRATHAP KUMAR Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

The petitioner has been arrayed as accused in SC No.345 of 2016 and the trial Court convicted him for the offence punishable under Sections 364, 328, 302, 201 r/w 302 IPC and for the offence under Section 364 IPC, sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment, for the offence under Section 328 IPC, sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment, for

the offence under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment and for the offence under Section 201 r/w 302 IPC, sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and the sentences are ordered to run concurrently. Seeking suspension of sentence, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the link has not been established in a case where the reliance has been made on circumstantial evidence. Admittedly, there is no eye witness. Though the case of the prosecution is that the deceased was in a drunken state, the post mortem report did not disclose the same. The trial Court, convicted the petitioner without considering the materials available on record. He has been in incarceration for a period of more than one and half years. Therefore, the petition will have to be allowed.

3. The learned Additional Public Prosecutor submitted that though it a case of circumstantial evidence, the trial Court has rightly found that the charges are proved based upon the confession statement and recovery coupled with the evidence adduced by the prosecution witnesses. Hence, the petition will have to be dismissed.

4. The petitioner has been in incarceration from 18.01.2018 onwards. We are dealing with a case of circumstantial evidence. The post mortem report also does not reveal that the deceased was under the influence of alcohol. There is also no test identification parade conducted. The identification of the accused was made by P.W.5 after 2 ½ years. We find considerable points involved in the appeal to be decided.

5. In view of the above, the substantive sentence of imprisonment alone is suspended on condition 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 Judicial Magistrate, Sankarapuram and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-  
27/06/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)  
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,  
SANKARAPURAM,  
VILLUPURAM DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE  
VILLUPURAM [FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
KALALKURICHI,  
VILLUPURAM DISTRICT

4 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,  
SANKARAPURAM POLICE STATION,  
SANKARAPURAM,  
VILLUPURAM DISTRICT

6 THE SUPERINTENDENT,  
CENTRAL PRISON,  
CUDDALORE

+1 C.C. to M/S.R.ARUN DATTAN Advocate on payment of necessary  
charges SR.NO.12760

Order

in  
CRL MP.914/2018

in  
CRL.A.No.47/2018

Date :27/06/2019

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