

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Friday, the Sixteenth day of August 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.10381 of 2019
in CRL.A.NO.471 OF 2019

ARUL

[PETITIONER]

Vs

STATE BY
INSPECTOR OF POLICE,
PUDHUCHATRAM POLICE STATION,
NAMAKKAL DISTRICT.
(CR.NO.468/2011)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.471 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the judgment dated 10.10.2018 made in S.C.No.26 of 2012 on the file of the Principal Sessions Court, Namakkal and enlarge the petitioner on bail pending disposal of the above Crl.A.No.471 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.471 of 2019. on the file of the High Court and upon hearing the arguments of M/S.GURUPRASAD M., Advocate for the petitioner and of M/S.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 along with A2 has been convicted for the major offence punishable under Section 302 IPC in S.C. No.26 of 2012 on the file of the learned Principal Sessions Judge, Namakkal to undergo life imprisonment. Additionally, the petitioner is also convicted under Section 404 IPC as M.O.1 and M.O.3 have been

recovered from him. The trial Court convicted the petitioner for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month, for the offence punishable under Section 201 IPC sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month and for the offence under Section 404 IPC, sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month and ordered the sentences to run concurrently.

2. The case of the prosecution is that in view of the previous quarrel between the deceased and the accused, the accused was made to get intoxicated and thereafter pushed into the stagnated water. Originally case has been registered under Section 174 Cr.P.C. and thereafter altered to 302 IPC. Seeking to suspend the sentence, the present petition has been filed.

3. The learned counsel appearing for the petitioner would submit that A2 has already been granted suspension of sentence by this Court. The overt act attributed against the petitioner and A2 is same except the conviction rendered under Section 404 IPC. The very extra judicial confession followed by arrest and recovery cannot be sustained in the eye of law. P.W.1 has stated that she has seen the accused in the custody of the police. P.W.1 has also not stated earlier about the motive. There are material discrepancies available in the evidence produced. The trial Court treated them as minor discrepancies. Therefore, suspension of sentence will have to be granted.

4. The learned Additional Public Prosecutor appearing for the State would submit that the trial Court, based upon the last seen theory coupled with extra judicial confession followed by recovery, convicted the accused. The witnesses have spoken about the presence of the accused along with the deceased both prior and thereafter. Thus, the petition will have to be dismissed as A2 has not been charged and convicted under Section 404 IPC.

5. The overt act attributed against the petitioner and A2 is one and the same. Therefore, we are of the view that the order passed by this Court in Crl.M.P.No. 14731 of 2018 in Crl.A.No. 691 of 2018 dated 26.11.2018 is applicable to the case of the petitioner as well.

6. We are dealing with a case of circumstantial evidence. Initially, the case has been registered under Section 174 CrPC. Even as per the case of the prosecution, the deceased was drunk. The death was due to asphyxiation. The witness who signed the recovery also has not been examined.

7. Considering the above, we find that there are arguable points involved to be decided in the appeal and we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that 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, No. II, Namakkal and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

16/08/2019

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,
NO.II, NAMAKKAL

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
PUDHUCHATRAM POLICE STATION,
NAMAKKAL DISTRICT

5 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL

6 THE SUPERINTENDENT,
CENTRAL JAIL, COIMBATORE.

C.C. to M/S.GURUPRASAD M. Advocate on payment of necessary charges SR.NO.17124

WEB COPY
Order
in
CRL MP.10381/2019

in CRL.A.NO.471 OF 2019

Date :16/08/2019

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RVR 16/08/2019