

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Ninth 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.10328 of 2019

IN CRL A.614/2018

1 ARUL KUMAR @ ARUNKUMAR [PETITIONERS]
2 SANTHOSH KUMAR
3 SASIKUMAR

Vs

1 THE STATE REP BY [RESPONDENT]
THE INSPECTOR OF POLICE,
TALUK POLICE STATION,
CHIDAMBARAM CUDDALORE DISTRICT
CR.NO.86 OF 2013.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.614/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner made in SC No.70/2014 dated 20.09.2018 passed by the learned 2nd Additional District and Sessions Judge, Chidambaram and enlarge the petitioners on Bail pending disposal of the main Crl A.No.614/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.614/2018 on the file of the High Court and upon hearing the arguments of M/S.N.SATHISH BABU Advocate for the petitioner and of MR. C.IYYAPPARAJ, ADDL. 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 A3 along with 13 other accused in S.C.No.70 of 2014 on the file of the II Additional District and Sessions Judge, Chidambaram. The trial Court by judgment dated 20.09.2018 convicted the petitioner for the offence punishable under Sections 148, 294(b) and 302 IPC and for the offence punishable under Section 148 IPC, sentenced to undergo one year rigorous imprisonment, for the offence under Section 294(b) IPC,

to pay a fine of Rs.250/-, in default, to undergo one month simple imprisonment and for the offence under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one year simple imprisonment. Seeking suspension of sentence, the present petition has been filed.

2. The case of the prosecution is that the petitioner along with the other accused pursuant to the election dispute, which arose with the deceased, attacked him brutally and committed the offence.

3. The learned counsel appearing for the petitioner would submit that the trial Court has not considered the evidence of Doctor who conducted the post-mortem. He has opined that the deceased would have died 18 - 36 hours prior to death. The post-mortem was done on the same day. There is a material discrepancy between the evidence of P.W.1 and P.W.3. The discrepancy is with respect to the place of residence of the witnesses. There is no blood stain available in the dress of the witnesses who deposed as eye witnesses. They did not even raise any alarm. Therefore, the very presence of themselves is in doubt. P.W.2 has turned hostile. The trial Court has not considered this aspect in the right perspective. Some of the co-accused have already got their sentence suspended by this Court. Thus, the sentence will have to be suspended.

4. The learned Additional Public Prosecutor appearing for the State would submit that recovery has been proved. There are eye witnesses who speak about the occurrence. There is a specific overt act attributed against the petitioner. The trial Court considered these aspects and convicted the accused. Thus, this petition will have to be dismissed.

5. The petitioner has been under incarceration from 20.09.2018 onwards. Some of the co-accused have already been granted suspension of sentence by this Court. Whenever the case has been registered under Section 149 of the Indian Penal Code, the Court will have to be very cautious in rendering conviction as a matter of principle. It is the case of the prosecution that 14 accused joined together and attacked the deceased. We have also perused the evidence of P.W.1 and P.W.3 and as well as the Doctor who gave the post-mortem report. From the above, we do find considerable points involved to be decided in the appeal. Thus, in the light of the above and taking into consideration the period of incarceration coupled with the some of the co-accused have already been granted suspension of sentence.

6. Considering the above, 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 the Judicial Magistrate No.II,

Chidambaram 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/-

29/08/2019

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, CHIDAMBARAM

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE[FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON,CUDDALORE

4 THE INSPECTOR OF POLICE,
TALUK POLICE STATION,
CHIDAMBARAM CUDDALORE DISTRICT

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE 2ND ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CHIDAMBARAM

+1 C.C. to M/S.N.SATHISH BABU Advocate on payment of necessary charges SR.NO. 18163

WEB COPY
Order
in
CRL MP.10328/2019

in
CRL A.614/2018

Date :29/08/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 29/08/2019