

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Seventh day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.16039 of 2019

IN CRL.A.NO.354 OF 2018

KARTHICK

[PETITIONER]

Vs

STATE REPRESENTED BY [RESPONDENT]
INSPECTOR OF POLICE,
P6, KODUNGAIYUR POLICE STATION,
CHENNAI-118,
(CRIME NO.1218/2013).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.354/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in conviction Judgement in SC No.34/2015 dated 19.03.2018 passed by the Mahila Sessions Judge, Chennai and enlarge the petitioner on bail pending disposal of Criminal Appeal No.354/18.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.354/2018 on the file of the High Court and upon hearing the arguments of M/S. B.MAHESWARAN Advocate for the petitioner and of MR.K.PRABAKAR 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 sole accused in S.C.No. 34 of 2015 on the file of Sessions Judge, Mahila Court, Chennai. The trial Court, by judgment dated 19.03.2018 convicted the petitioner for the offence punishable under Sections 341 and 302 IPC and for the offence punishable under Section 341 IPC sentenced to undergo one month

imprisonment and for the offence under Section 302 IPC sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months simple imprisonment and ordered the sentences to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner was living with the deceased. There was a quarrel on the night of the occurrence - 09.07.2013. Thereafter, the petitioner committed the offence by pouring kerosene on the deceased. The trial Court convicted the petitioner based upon the evidence adduced and seeking suspension of the sentence imposed, for the second time, the present petition has been filed. The earlier petition filed was dismissed on 06.02.2019.

3. The learned counsel appearing for the petitioner submitted that P.Ws. 3 to 5 are the witnesses, who stated to have seen the deceased at the earliest point of time. The deceased, for the reasons known to her, did not disclose the fact that the petitioner has poured kerosene on her. They have turned hostile. Therefore, merely based upon the dying declaration, the conviction ought not to have been rendered. Even the dying declaration given coupled with the complaint registered are contrary to the evidence of D.W.1. D.W.1 is none other than the brother of the deceased. It is not as if the deceased was not known to the petitioner. D.W.1 has married the sister of the petitioner. The trial Court, has not considered all these aspects. Now, the petitioner has been under incarceration from 19.03.2018 onwards. Therefore, there are sufficient points available in the appeal. Hence, the sentence imposed will have to be suspended.

4. The learned Additional Public Prosecutor appearing for the State would submit that P.Ws. 3 to 5 turned hostile. Therefore, not much reliance has been made on the same. The dying declaration inspired the confidence of the trial Court and, therefore, placing reliance upon the same, the conviction has been rendered. Thus, this petition will have to be dismissed.

5. We do find considerable grounds available in the appeal. The evidence of P.W.s 3 to 5 have turned hostile. It appears that the deceased was taken to the house of her mother and, thereafter to the hospital. D.W.1, who is none other than the brother of the deceased has also deposed in favour of the petitioner. The petitioner has been under incarceration for more than one and half years.

6. We have perused the earlier order passed by this Court. We feel that considering the discussion made above, the petitioner is entitled to get the suspension especially when the earlier order was passed about eight months earlier.

7. Considering the above coupled with the period of incarceration of the petitioner, 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 Mahila Sessions Court at

Chennai 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/-
07/11/2019

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 SESSIONS JUDGE
MAHILA COURT, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

4 THE INSPECTOR OF POLICE,
P6, KODUNGAIYUR POLICE STATION,
CHENNAI-118,

5 THE MAHILA SESSIONS COURT
AT CHENNAI

+1 C.C. to M/S. B.MAHESWARAN Advocate on payment of necessary charges SR.NO. 22926

सत्यमेव जयते

Order

in

CRL MP.16039/2019

IN CRL.A.NO.354 OF 2018

Date :07/11/2019

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