

CRL MP No. 12364 of 2019
in Crl.A No. 485 of 2019

M.M.SUNDRESH, J.
and
RMT. TEEKAA RAMAN, J.

(Order of the Court was made by *M.M.SUNDRESH,J*)

The petitioner has been arrayed as an accused in S.C.No. 2015 of 2017 along with two other accused who are none other than his minor children, on the file of I Additional District and Sessions Judge, Coimbatore. The trial Court, by judgment dated 19.02.2019 convicted the petitioner for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/, in default, to undergo three months simple imprisonment. Seeking to suspend the sentence awarded by the trial Court, the present petition has been filed.

2. The case of the prosecution is that the deceased was not treating P.W.1 who is none other than the brother's daughter of the petitioner. Thereafter, P.W.2, who is also the brother's son of the petitioner brought the deceased to meet the petitioner. Pursuant to the quarrel, the petitioner and the other accused attacked the

deceased and committed the offence. The overt act attributed against the petitioner is that he attacked the deceased with M.O.3 - knife on the shoulder.

3. The learned counsel appearing for the petitioner submitted that the evidence of P.W.2 has not spoken about the presence of P.W. 1 and P.W.3. The recovery of M.O.3 is doubtful particularly when the blood stain report is not conclusive. There is a wordy quarrel between the accused and the deceased. Even as per the evidence of P.W.2, the deceased was brought by him to meet the petitioner. Therefore, considering the above, there are available points to be argued in the appeal. The petitioner has been under incarceration for more than six months. Thus, the suspension of sentence will have to be granted.

4. The learned Additional Public Prosecutor appearing for the State would submit that there are three eye witnesses available in this case. P.W. 2 is the injured witness. The trial Court considered the evidence of P.W.2 along with the other witnesses and convicted the petitioner. Therefore, the petition will have to be dismissed.

5. We do find existence of arguable points available in the appeal. Even assuming the case of the prosecution is accepted, the larger question is as to whether the offence committed by the petitioner would come under Section 302 IPC or 304 Part (I) or Part (II) IPC, as the case may be. The petitioner has been under incarceration for more than six months. The overt act attributed against him is that he attacked the deceased on the shoulder which *prima facie* may not be a fatal injury.

6. 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 I Additional District and Sessions Court, Coimbatore 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.

(M.M.S.,J.) (T.K.R.,J.)
12.09.2019

mmi/ssm

**Crl.M.P.No.12364 of 2019
in Crl.A. No. 485 of 2019**

M.M.SUNDRESH, J.
and
RMT. TEEKAA RAMAN, J.

(Order of the Court was made by
M.M.SUNDRESH, J.)

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2.Learned counsel for the petitioner submitted that in the first paragraph of the order dated 12.09.2019, the case number has been wrongly typed as S.C.No.2015 of 2017 instead of 205 of 2017.

3.Considering the submission made by the learned counsel for the petitioner, S.C.No.2015 of 2017 shall be substituted with S.C.No.205 of 2017.

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**(M.M.S.,J.) (T.K.R.,J.)
25.09.2019**

mmi

Note: Registry is directed to issue corrected order copy today

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in Crl.A No 485 of 2019

**M.M.SUNDRESH, J.
and
RMT. TEEKAA RAMAN, J.**

(ssm)



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25.09.2019