

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 3853 of 2020

in Crl.A No. 915 of 2019

1.Govindaraj

2.Raja

.... Petitioners

vs

State Rep. by

The Inspector of Police,
Pennadam Police Station,
Virudhachalam District.

.... Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence and grant bail to the petitioners/appellants for the conviction and sentence imposed in S.C.No.331 of 2018 dated 17.10.2019 on the file of the III Additional District and Sessions Court, at Cuddalore, Virudhachalam pending disposal of the appeal.

For Petitioners .. Mr.K.Gandhi Kukmar

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

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

The petitioners have been arrayed A1 and A2 in S.C.No. 331 of 2019 on the file of III Additional District and Sessions Judge, Cuddalore at Virudhachalam. The trial Court by judgment dated 17.10.2019 convicted the petitioners for the offence punishable under Section 302 r/w 34 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment. Seeking to suspend the sentence, the present petition has been filed.

2. The case of the prosecution is that A4, who is the juvenile, being the daughter-in-law of the first petitioner was in talking terms with the deceased daughter which was not liked by him as the marriage between her and the son of the first petitioner was a love marriage. Enraged over the attitude of the deceased, all the accused joined together and attacked him pursuant to a quarrel. Insofar as the first petitioner is concerned, he is stated to have attacked the deceased on the chest with a stone while the second petitioner attacked him with a brick. The trial Court acquitted A3 while A4 being the juvenile got her case separated, which is being tried by the jurisdictional Juvenile Justice Board.

3. Learned counsel appearing for the petitioners submitted that the eye witnesses' evidence cannot be believed. They are interested witnesses. Even otherwise, there are material contradictions with respect to the overt act attributed to the petitioners. One of the witnesses says that it is the second petitioner who attacked the deceased as against the first petitioner. The deceased also did not give any statement before the Doctor, who treated him in the hospital implicating the petitioners. Thus, considering the above, particularly the period of incarceration, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that there are eye witnesses available. P.Ws 1 to 6 are the direct witnesses. Their evidence corroborates with that of the statement given by the Doctor who conducted post-mortem. The trial Court considered these aspects while acquitting A3. Thus, the petition will have to be dismissed.

5. The petitioners are father and son. They are under incarceration from 17.10.2019 onwards. The deceased and the petitioners are not only neighbours but also relatives. The occurrence is said to have happened pursuant to the objection raised by the deceased over the continued relationship between A4 and his daughter. The overt act attributed against the petitioners is also to the effect that they attacked the deceased with stone. Thus, the question to be considered is as to whether the petitioners are entitled for acquittal and the offence punishable under Section 302 IPC is made out or not as against Section 304 IPC Part I or Part II, as the case may be. Thus, we do find existence of issues to be decided in the appeal. As stated, the petitioners have been under incarceration for more than one year. Thus, in the light of the above, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of 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 District Munsif-cum-Judicial Magistrate, Mittakudi and on further condition that the petitioners

shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
24/11/2020

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 III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CUDDALORE AT VIRUDHACHALAM.

2 THE DISTRICT MUNSIF-CUM-
JUDICIAL MAGISTRATE, THITTAKUDI.

3 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

5 THE INSPECTOR OF POLICE,
PENNADAM POLICE STATION,
VIRUDHACHALAM DISTRICT.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S. K.GANDHI KUMAR Advocate on payment of necessary charges SR.No.7798

Order

in

CRL MP.3853/2020

in

CRL.A.915/2019

Date :24/11/2020

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

cs 27/11/2020

<https://hcservices.ecourts.gov.in/hcservices/>