

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 4672 of 2020

in Crl.A No. 76 of 2020

1.P.Santhanam
2.P.Ramasamy
3.Lakshmi Perumal
4.Sakthivel

.... Petitioners

vs

The State Rep. by
The Inspector of Police,
Arachalur Police Station,
Crime NO. 210 of 2016
Erode District.

.... Respondent

Petition filed under Section 389(1) of Cr PC to suspend the sentence of imprisonment imposed in the judgement dated 27.01.2020 made in S.C.No. 69 of 2017 on the file of First Additional District and Sessions Court Erode and enlarge the petitioners on bail pending disposal of C.A.No. 76 of 2020.

For Petitioners .. Mr.N.Manokaran

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 as A1 to A4 in S.C.No. 69 of 2017 on the file of I Additional District and Sessions Judge, Erode. The trial Court by judgment dated 27.01.2020 convicted the petitioners for the offence punishable under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to undergo six months simple imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that due to the previous enmity with respect to sharing of water and the usage of channel between the fourth petitioner and the deceased, who are the brothers, the occurrence has taken place.

3. Learned counsel appearing for the petitioners submitted that the only eye witness, namely, P.W.14 has turned hostile. The third petitioner is a lady. The deceased and A4 are brothers and the other accused are cousins. It is a case in counter. The deceased was taking treatment in the hospital for about twenty-seven days. The evidence of the Doctor was to the effect that there were bedsores while the deceased was taking treatment. These aspects have not been considered by the trial Court. The petitioners have been under incarceration from 27.01.2020 onwards. Hence this petition will have to be allowed.

4. Learned Additional Public Prosecutor appearing for the State submitted that the overt act is attributed against each of the petitioners. The motive has also been proved. The trial Court considered these aspects and, therefore, the present petition will have to be dismissed.

5. The question for consideration is as to whether the offence under Section 302 IPC is made out or not even assuming the occurrence is true. As stated, it is a case in counter. The fourth petitioner and the deceased are brothers. The dispute occurred pursuant to the sharing of water. It is only the first petitioner, who attacked the deceased with the axe. Thus, considering the above, and particularly the period of incarceration, 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 Judicial Magistrate No.2, Erode and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

30/11/2020

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 JUDICIAL MAGISTRATE,
NO.II, ERODE

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE (FOR INFORMATION)

3 THE I ADDITIONAL DISTRICT AND
SESSIONS COURT, ERODE

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE STATE BY INSPECTOR OF POLICE,
ARACHALUR POLICE STATION,
ERODE DISTRICT.

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. N.MANOKARAN Advocate on payment of necessary
charges SR.NO.7822

Order

in
CRL MP.4672/2020

in
CRL A.76/2020

Date :30/11/2020

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