

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 5013 of 2020

in

CrI.A No. 324 of 2020

Narayanan

.... Petitioner

vs

The Inspector of Police,
Valathy Police Station,
Valathy, Gingee Taluk,
Villupuram District.

.... Respondent

Petition filed under Section 389(1) Cr.P.C. to suspend the sentence passed by Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram dated 19.06.2020 in S.C.No. 166 of 2017.

For Petitioner .. Mr.B.Jawahar

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

ORDER

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

The petitioner has been arrayed as the sole accused in S.C.No. 166 of 2017 on the file of Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram and convicted for the offence punishable under Section 302 IPC. For the offence punishable under Section 302 IPC, the petitioner was sentenced to undergo life imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo one year rigorous imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner is having matrimonial discord with P.W.10, who is none other than his wife. On the date of occurrence, he went to the house of the deceased where P.W.10 was also residing being the grand-daughter and picked up a quarrel with her. It is the further case of the prosecution that P.W.10 was not available on the fateful day. Pursuant to the said wordy quarrel, he attacked the deceased with wooden log and committed the offence. The trial Court after considering the evidence on record convicted the petitioner.

3. Learned counsel appearing for the petitioner submitted that P.W.10 was having an affair with a third party. Enraged over the same, there was a wordy quarrel between him and the said person. The said third party by name Duraisamy attacked the petitioner, which fell on the deceased, who was aged 75 years old. Resultantly, she died. Therefore, the charge, as framed cannot be sustained in the eye of law and the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that the defence set up by the petitioner is not supported by evidence. Even assuming all the witnesses have turned hostile, considering the materials available, the trial Court convicted the petitioner and, therefore, the present petition will have to be dismissed.

5. The issue for consideration is as to whether the case would come under Section 302 IPC per se or Section 304 IPC either Part I or Part II, as the case may be. Even the evidence of P.W.1 is to the effect that he saw the petitioner having quarrel with the deceased. The deceased was aged about 75 years. It is the case of the prosecution that the petitioner believed that the separation between him and P.W.10 was due to the advice given by the deceased. The overt act attributed against the petitioner is that he took the M.O.1 and attacked the deceased on the head.

6. Considering the aforesaid case as projected by P.W.1, we are of the prima facie view that it may not be a case which would attract Section 302 IPC. Perhaps, it is a case where either Part I or Part II of Section 304 IPC may apply. The deceased was also seventy five years old. Thus, we find that considerable points are available to be considered in the appeal. In such view of the matter, we are inclined to suspend the sentence.

7. 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 Judicial Magistrate, Gingee 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/-

14/10/2020

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,
GINGEE

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM(FOR INFORMATION)

3 THE SESSIONS COURT,
MAGALIR NEETHIMANDRAM(FAST TRACK MAHILA
COURT), VILLUPURAM

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE
VALATHY POLICE STATION, VALATHY,
GINGEE TALUK, VILLUPURAM DISTRICT.

6 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

C.C. to M/S.B.JAWAHAR Advocate on payment of necessary charges
Sr.6864

Order

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Date :14/10/2020

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