

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Seventh day of November Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.5002 of 2020

IN CRL.A NO.323/2020

1 SANKAR [PETITIONER]
2 SHANMUGASUNDARAM (A) SABARI
3 MUTHU

Vs

STATE REP. BY [RESPONDENT]
THE INSPECTOR OF POLICE, VIRUDHACHALAM
POLICE STATION, CUDDALORE DISTRICT,
(CRIME NO.253 OF 2017).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.323 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence and grant bail to the petitioner/appellant for the conviction and sentence imposed in S.C.No.1 of 2018 dated 06.07.2020 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.K.GANDHI KUMAR, Advocate for the petitioner and of MR.K.PRABHAKAR, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondents the court made the following order:-

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

The petitioners have been arrayed as A1 to A3 in S.C.No 1 of 2018 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam. The trial Court by judgment dated 06.07.2020 convicted the petitioners for the offence punishable under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default, to undergo six months simple imprisonment. Seeking suspension of sentence imposed, the present petition has been

filed.

2. Learned counsel appearing for the petitioner is not pressing insofar as the third petitioner/A3 is concerned. **Accordingly, the petition stands dismissed as withdrawn as against the third petitioner/A3.**

3. The case of the prosecution is that the deceased was administering the temple in which the first petitioner was working. There was a quarrel between the parties with respect to the functioning of the employees including the first petitioner. The petitioner attacked the deceased, by taking the key belonging to the temple from his possession, on the head while the second petitioner, who is the son attacked him near the eyebrow.

4. Learned counsel appearing for the petitioners submitted that there are material contradictions in the deposition of eye witnesses and the medical records marked. The witnesses say that the attack was on the left side whereas the fatal injury was found on the right side. The earlier compliant has been burked. The first petitioner was admitted in the hospital having been attacked by the deceased. Therefore, the presence of the first petitioner itself is doubtful. Insofar as the second petitioner is concerned, he merely attacked him near the eyebrow, which is not fatal. The trial Court having exonerated the petitioners for the offence under Section 34 IPC which constitutes a vicarious liability, nonetheless convicted them for the offence punishable under Section 302 IPC. Thus, there are sufficient points available in the appeal and the sentence will have to be suspended insofar as A1 and A2 are concerned.

5. Learned Additional Public Prosecutor appearing for the State submitted that there are eye witnesses who deposed and apart from the same, CCTV footage has also been marked. The trial Court considered this aspect while rendering conviction. Thus, the present petition will have to be dismissed.

6. We find that the issues on fact and law to be argued in the appeal are available in this case. Even considering the overt act attributed, the petitioners 1 and 2/A1 and A2 are entitled for suspension. The material objects namely, the key of the Temple was in the possession of the deceased belonging to the Temple. Therefore, the question of intention will have to be seen. The Doctor who has been examined as P.W.10 has also deposed that it was the first petitioner who was brought to her for treatment and thereafter the deceased. The first petitioner was stated to have attacked the deceased. Insofar as the 2nd petitioner is concerned, he attacked the deceased near the eyebrow, which cannot be termed as fatal. The trial Court has also exonerated them under Section

34 IPC. Thus, taking into consideration the above said facts, we are inclined to suspend the sentence insofar as petitioners 1 and 2/A1 and A2 are concerned.

7. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioner/A1 and A2 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.1, Virudhachalam and on further condition that they shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

27/11/2020

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.I,VIRUDHACHALAM

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE DISTRICT, [FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CUDDALORE AT
VIRUDHACHALAM

4 THE INSPECTOR OF POLICE,
VIRUDHACHALAM POLICE STATION, CUDDALORE
DISTRICT, (CRIME NO.253 OF 2017).

5 THE PUBLIC PROSECUTOR,HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON,CUDDALORE

C.C. to M/S.K.GANDHI KUMAR Advocate on payment of necessary charges

Order

in
CRL MP.5002/2020
in
CRL.A.No323/2020

Date :27/11/2020

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

GKS:27/11/2020



WEB COPY