

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

Coram

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

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 7593 of 2020

in

CrI.A No. 485 of 2020

Umanath

... Petitioner

vs

State by

Inspector of Police,
Vadalur Police Station,
Cuddalore District.

... Respondent

Petition filed under Section 389(1) of Cr PC to suspend the sentence imposed on the petitioner by I Additional District and Sessions Judge, Cuddalore by judgment dated 28.10.2020 in S.C.No. 394 of 2017 pending disposal of the appeal.

For Petitioner .. Mr.S.N.Arun Kumar

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 A2 along with the other accused in S.C.No. 394 of 2017 on the file of the I Additional District and Sessions Judge, Cuddalore. They have been convicted for the offence punishable under Sections 352 and 302 IPC by judgment dated 28.10.2020. For the offence punishable under Section 352 IPC, the petitioner was sentenced to undergo one month simple imprisonment and to pay a fine of Rs.300/-, in default, to undergo one week simple imprisonment and 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 six months simple imprisonment. Seeking suspension of sentence, the present petition has been filed.

2.The case of the prosecution is that a dispute arose between the parties pursuant to the survey done over their lands. In pursuance of the wordy quarrel, the accused persons attacked the deceased, who was aged about 75 years, while causing injury to the other witness. This petitioner was convicted for the offence punishable under Section 302 IPC along with Section 352 IPC while acquitted under Section 302 r/w 34 IPC.

3.Learned counsel appearing for the petitioner submitted that the overt act against this petitioner is that he kicked the deceased pursuant to a wordy quarrel. Though there was a fracture in the cervical joint, there is no intention that can be attributed against him nor any knowledge. Therefore, it cannot be termed as case of homicide coming within the purview of Section 299 or 300 IPC, as the case may be. Thus, it can be, at best, come under Section 352 IPC, for which the petitioner has already underwent the period of incarceration.

4.Learned Additional Public Prosecutor appearing for the State submitted that there are eye witnesses available in the form of P.Ws 1 to 10. The trial Court considered those evidence while rendering conviction and therefore contended that this petition requires to be dismissed.

5.We find force in the submission made by the learned counsel appearing for the petitioner. There was a wordy quarrel. The petitioner, accused and prosecution witness along with the deceased were agriculturists. The dispute arose pursuant to a survey that was done on the date of occurrence. The deceased was aged about 75 years. The overt act attributed against the petitioner by the prosecution is that he kicked the deceased. The incidental fracture leading to the death would not convert the offence committed by the petitioner into one punishable under Section 299 IPC or Section 300 IPC, as the case may be. This is a matter which has to be considered at the time of trial, as we found, prima facie, the case is made out. A further question is also for consideration in the appeal is at whose instance the very quarrel emanated.

6.Thus, taking into consideration of the above, particularly, the deceased was aged about 75 years and the dispute has arisen pursuant to a wordy quarrel which emanated at the time of survey being done, 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, III, Cuddalore and on further condition that the petitioner shall stay at Trichy and report before the Town Police Station, Trichy daily at 10.30 a.m. until further orders.

-sd/-

21/12/2020

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.III
CUDDALORE

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE (FOR INFORMATION)

3 THE I ADDITIONAL DISTRICT
ANDSESSIONS JUDGE, CUDDALORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 INSPECTOR OF POLICE,
VADALUR POLICE STATION,
CUDDALORE DISTRICT

6 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

7 THE INSPECTOR OF POLICE,
TOWN POLICE STATION,
TRICHY

C.C. to M/S. C.RAMKUMAR Advocate on payment of necessary
charges Sr.8508

Order

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Date :21/12/2020

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