

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.38 of 2023
in Crl.A.No.1083 of 2022

1. N.Jayakumar
2. C.Prasanth

... Petitioners/A3 & A4

Vs.

State Rep. by
The Inspector of Police,
Bhavani Police Station,
Bhavani, Erode District.
Cr.No.256/2013.

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Erode, dated 13.09.2022 in S.C.No.127 of 2018 and enlarge the petitioners on bail pending disposal of the above appeal.

For Petitioners : Mr.B.Mohan
For Respondent : Mr.A.Gokulakrishnan

Additional Public Prosecutor

ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners/A3 & A4, by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Erode in S.C.No.127 of 2018, by the judgment dated 13.09.2022, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Erode in S.C.No.127 of 2018, convicted the petitioners herein/A3 & A4 for the offence under Sections 302 r/w 34 and 294 (b) of IPC and sentenced them as follows:

Accused No.	Offence under Section	Sentence imposed
A3 & A4	302 r/w 34 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

	294 (b) IPC	Each of them to undergo one month SI.
The period of sentences imposed above are directed to run concurrently.		

3.Challenging the above conviction and sentence, the petitioners who are arrayed as A3 & A4, has filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.B.Mohan, learned Counsel appearing for the petitioners and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the deceased and the accused owned adjacent agricultural lands; that they shared a common cart track to go to their the agricultural fields; that they had dispute over the usage of the said common cart track; that the deceased laid a pipeline on the common track; that due to the said dispute on 06.05.2017 at about 1 pm, when the deceased and his mother were passing through the common track to reach

their field, the accused prevented them and attacked them with iron rod causing injury on the left eyebrow and left forehead, as a result of which, the deceased succumbed to the injuries.

6. The learned counsel for the petitioners submitted that all the family members viz., the father, mother and two sons who are arrayed as A1, A2, A3 and A4, respectively were roped in falsely due to prior enmity; that A2 also sustained injuries and she had lodged a complaint in Cr.No.255 of 2017; that the PW1 had lodged a complaint and it was registered as Cr.No.256 of 2017; that since the deceased was alive at that time, the FIR was registered for the offence under Sections 294(b), 324 and 506 (ii) IPC; that the deceased died two days after the occurrence and he underwent a surgery in the mean time; and that thereafter the Section was altered to 294(b), 324, 302 and 506(ii) IPC.

7. The learned counsel for the petitioners further submitted that the petitioners viz., who are appellants 2 and 3 in the above appeal and arrayed as A3 and A4 in the trial, are the sons of A1 and even according to the

prosecution, they did not cause the fatal injury to the deceased. The learned counsel further submitted that the petitioners are undergoing incarceration from 13.09.2022 and therefore, prayed to suspend the sentence imposed on the petitioners/A3 & A4.

8. The learned Additional Public Prosecutor per contra submitted that the prosecution has established its case beyond reasonable doubt; that PW1-wife of the deceased is the eye witness to the occurrence; that the defence had not elicited any fact in the cross examination to suggest that PW1 cannot be believed; and that the evidence of PW1 is also corroborated by the evidence of PW2 to PW4.

9. It is seen from the records that there was a case and counter case. A1 is said to have attacked the deceased with the handle of the spade on the back side of the neck of the deceased; A2 is said to have assaulted PW1 with Iron Road; A3 is said to have taken the spade from his father and assaulted the deceased; and A4 is said to have attacked the deceased with another spade. Though overt acts were attributed to A2 also, she was

acquitted by the trial Court. Admittedly, the deceased died 2 days after the occurrence. It is found from the Accident Register [Ex.P5], that there are no external injuries on the deceased. PW7 had stated that a brain surgery was performed on the deceased for clotting of blood. It is also admitted that A2 had suffered injuries in the occurrence.

10. Considering the above facts, the nature of injuries suffered by the deceased, the overt acts attributed to the petitioners herein/A3 & A4, their age and the fact that they are in custody from 13.09.2022 and the appeal is not likely to be taken up in the near future, this Court is inclined to Suspend the Sentence imposed on the petitioners herein/A3 & A4.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioners (A3 and A4) is suspended on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions

Judge, Magalir Needhi Mandram (Fast Track Mahila Court),
Erode;

- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;
- (iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

(S.S.S.R., J.) (S.M., J.)
02.11.2023
(2/2)

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Internet : Yes
Index : Yes / No

Note to office:
Upload the order copy forthwith

To

- 1.The Sessions Judge,
Magalir Needhi Mandram,
(Fast Track Mahila Court),
Erode.
- 2.The Inspector of Police,
Bhavani Police Station,
Bhavani, Erode District
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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