



CRL.M.P. No. 11558 of 2024
in
CrI.A. No.1049 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE M. NIRMALKUMAR

CRL.M.P. No. 11558 of 2024

in

CrI.A. No.1049 of 2024

Palamalai

..Petitioner

Vs.

The State represented by the
The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore.
(Cr.No. 954/2020)

..Respondent

Prayer: Criminal Miscellaneous Petition to suspend the sentence imposed on the petitioner by judgment dated 15.02.2023 passed in S.C. No. 91 of 2021 by the learned I Additional District and Sessions Judge,



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Coimbatore pending disposal of the criminal appeal.

For Petitioner :: Mr.R. Rajarajan

For Respondent :: Mr.R. Vinothraja
Govt. Advocate (Crl.Side)

O R D E R

The petitioner/accused, who was convicted by the Trial Court in S.C. No. 91 of 2021 by judgment dated 15.02.2023 for the offence under Section 304(II) IPC and sentenced to undergo 10 years rigorous imprisonment together with a fine of Rs.5000/- carrying a default sentence of 6 months simple imprisonment, has filed the above criminal miscellaneous petition seeking suspension of sentence and bail.

2(i) The case of the prosecution is that the deceased Dhanapal, son of the petitioner/accused was a painter. He married one Radhamani and lived with his wife only for 6 months. Thereafter, they got separated and divorced. Radhamani married another person. Dhanapal did not remarry and he was staying with his parents, namely, petitioner and P.W.2, his mother. The said Dhanapal used to consume alcohol daily, spend his



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earnings and in drunken state, he used to hit and pick up quarrels with everyone including his parents. On the date of occurrence, i.e., on 09.08.2020, he came to the house at about 12.15a.m. and demanded food. P.W.2, his mother gave him food with lentils. Dhanapal got angry and questioned her as to why she is not giving non-vegetarian food. Saying so , he threw the plate at his mother and beat her. The petitioner/father intervened and questioned him. When Dhanapal tried to attack the petitioner, P.W.2 tried to prevent and at that time, the deceased caught hold of her tuft and beat her. Thereafter, the petitioner, with a *paakku thappai*, beat Dhanapal on his neck, head and various other parts resulting in his death.

(ii) P.W.1, the local councillor lodged a complaint with the Police. P.W.13, the Sub Inspector of Police, registered the FIR and placed it before P.W.16, the Inspector of Police, who took up investigation and after completing the same, arrested the accused and filed charge sheet for the offence under Section 302 IPC. During trial, P.W.s 1 to 16 were examined, Exs.P1 to P19 were marked and M.O.s1 to 5 were produced. On completion



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of trial, the Trial Court convicted the petitioner as stated above against which, the petitioner has preferred the present appeal in Crl.A. No. 1049 of 2024.

3. The contention of the learned counsel for the petitioner is that the petitioner is the father of deceased Dhanapal. The petitioner is aged about 76 years and he is in prison from 15.02.2023 and earlier, during the period of investigation from 09.08.2020 to 05.11.2020, he was in prison. Learned counsel for the petitioner would submit that Dhanapal, is a drunkard, used to pick up quarrels with everyone and on the alleged date of occurrence, he had come in an inebriated state and in the midst of a quarrel, got hit by a grinding stone in the house and later, passed away in sleep. Since he was aggressive, his parents, namely, the petitioner and P.W.2 never questioned him or gone near fearing him. Since death had taken place inside the house and laceration injuries were found on the deceased, the petitioner was found to be the reason for Dhanapal's death. P.W.2, mother of deceased narrated the sequence of events that had happened inside the house. She was treated hostile partially. The other witnesses, namely,



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P.W.3-daughter, P.W.4 – son-in-law, P.W.s 5 and 6 neighbours, confirmed the character of Dhanapal, in a drunken state, picking up quarrels and behaving in an aggressive manner and assaulting the petitioner and P.W.2. The injuries on the deceased were not intentional. The abrasions and contusions, could have been caused due to fight, deceased Dhanapal might have had with someone else or due to a fall and the petitioner is not the reason for the same. Further, the case of the prosecution is that prior to the fight, there was a wordy quarrel and it was Dhanapal, who had been aggressive, beaten his mother P.W.2, at that point of time, the petitioner had intervened. Hence, due to sudden provocation, without intention or knowledge, the occurrence had taken place. From medical evidence and attendant circumstances, it is seen that the conviction of the petitioner under Section 304(II) IPC needs reconsideration.

4. Learned Government Advocate (Crl.Side) filed counter. The deceased is the son of the petitioner. On 09.08.2020, at about 12.15a.m., the deceased had come in an intoxicated state, picked up quarrel with his



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mother for the vegetarian food served to him. He had also attacked his mother. The petitioner/husband of P.W.2 had intervened and there was a scuffle. The petitioner had taken *paakku thappai* and attacked the deceased. The deceased suffered severe injuries and was allowed to die. P.W.1, Councillor, on coming to know about the incident, had lodged a complaint. The petitioner absconded and later, he was arrested. On the complaint of P.W.1, a case was registered. The petitioner's daughter, son-in-law and neighbours were examined as P.W.s 3 to 7. P.W.2 is the wife of the petitioner, who confirmed about the incident taking place on 09.08.2020. P.W.8 is the Revenue Inspector, who speaks about arrest and confession. The Doctor P.W.11, who conducted postmortem, issued Ex.P6 postmortem certificate wherein 14 injuries on the deceased were noted and all the injuries were contusions, abrasions, pressure abrasions and lacerations on the cheek, left ear, left deltoid, left shoulder, left forearm, dorsum of left hand, right elbow, right side of leg, left pinna, right eyebrow, lower lip and right eyelid, which confirm that there was a scuffle/fight between the petitioner and the deceased and after a prolonged fight, the petitioner had



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attacked the deceased with M.O.1 causing his death. The Trial Court, finding that the deceased used to pick up quarrels in an intoxicated condition with everyone and on the fateful day also, he had attacked his mother, which resulted in the petitioner intervening and attacking him. On such consideration, the petitioner has been convicted for the offence under Section 304(II) IPC.

5. Considered the submissions and perused the materials on record.

6. It is seen that the petitioner is the father of the deceased and the petitioner is aged about 76 years. It is not in dispute that the deceased Dhanapal was always in an intoxicated condition, picked up quarrels with everyone including the petitioner and his wife P.W.2. The occurrence had taken place inside the house. On the date of occurrence, Dhanapal, since deceased, had come in an inebriated condition at about 12.15a.m. and picked up quarrel with P.W.2 and attacked her. The petitioner, who is the father of the deceased and husband of P.W.2 had intervened in order to save his wife and questioned the deceased, which was followed by a scuffle



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between them. The injuries found on the deceased were abrasions and contusions on non-vital parts and the petitioner had used M.O.1, which is normally available in the house. In view of the above, this Court is inclined to suspend the sentence imposed on the petitioner and enlarge the petitioner on bail.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioner/accused is ordered to be enlarged on bail, on condition that he shall execute 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 the learned I Additional District and Sessions Judge, Coimbatore;

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Sessions Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.



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(c) The petitioner shall appear before the Trial Court once in three months on the first working day of English Calendar month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court.

11. Accordingly, this Criminal Miscellaneous Petition is ordered.

04.09.2024

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To

1. I Addl. District and Sessions Judge,
Coimbatore.
2. The Superintendent, Central Prison,
Coimbatore.

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M. NIRMALKUMAR,J.

nv

3. The Public Prosecutor,
High court, Madras.

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