

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6512 of 2020

in Crl.R.C.No.935 of 2020

T.Suresh

... Petitioner

Versus

The State rep. by
The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.
(Crime No.14 of 2014)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 482 of the Code of Criminal Procedure, to suspend the sentence imposed in the judgment dated 07.09.2020 in C.A.No.3 of 2020 on the file of the Principal Sessions Court, Namakkal, confirming the conviction and sentence imposed in the judgment dated 20.12.2019 in S.C.No.10 of 2016 on the file of the Chief Judicial Magistrate, Namakkal pending disposal of the above revision.

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

The petitioner herein is A1 in S.C.No.10 of 2015, on the file of the Chief Judicial Magistrate, Namakkal, was convicted by the judgment dated 20.12.2019 for the offence under section 324 IPC and sentenced to undergo Rigorous Imprisonment for a period of two years and the period of detention already undergone was ordered to be set off. Aggrieved against the same, the petitioner had filed an appeal in C.A.No.3 of 2020, before Principal Session Judge, Namakkal. The Principal Session Judge, Namakkal by its judgment dated 07.09.2020, dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Hence, the Criminal Revision Case has been filed along with a petition for suspension of sentence.

2. The case of the prosecution is that P.W.1/Ramesh @ Kandasamy, his brother Venkatachalam/P.W.2 and father Kondapapanaicker/P.W.3 were having some civil dispute over the pathway between the petitioner group and the civil suit is pending. In the civil suit, one Suresh was appointed as Advocate Commissioner to inspect and give a report about the disputed pathway. On 10.01.2014, the Advocate Commissioner inspected the place and measured the pathway. On the same day, at about 7.00 p.m., P.W.1 to P.W.4 were removing the stones and clearing the pathway. At that time, A1 to A6 joined together into unlawful assembly with the common objects, A1/Suresh was armed with an iron rod, A3/Thirumalairajan was armed with wooden log, A5/Sakthivel was armed with aruval and A6/Karthick was armed with wooden log and they started attacking P.W.1 to P.W.3. A1 beat P.W.3 with an iron rod on his head. A2 kicked P.W.3 on his face, due to which P.W.3 had lost his tooth. When P.W.2 attempted to intervene and save P.W.3, A4 received an iron rod from A1 and assaulted P.W.2 on his forehead and leg. A2 beat P.W.1 with wooden log. A2 and A3 kicked P.W.1 and caused injuries all over his body. Thus all the accused assaulted P.W.1 to P.W.3.

3. P.W.4/relative of P.W.1 took P.W.1 to P.W.3 to the hospital for treatment. P.W.8/Doctor attached to CM Hospital, Namakkal examined the witnesses and gave treatment at about 8.30 p.m. From the hospital Ex.P6/intimation about the incident was sent to the respondent Police. The injured were admitted as inpatient in the hospital from 10.01.2014 to 17.01.2014. The wound certificate of P.W.1 to P.W.3 has been marked as Ex.P7 to Ex.P9. Thereafter, P.W.10/Inspector of Police and P.W.9/Special Sub-Inspector of Police visited the hospital, recorded the statement from the witnesses, received a complaint from P.W.1 and registered an F.I.R/Ex.P10. Thereafter, they visited the scene of occurrence, prepared observation mahazar/Ex.P11 and rough sketch/EX.P12 in the presence of P.W.7 and P.W.11. On 11.01.2014, at about 7.30 p.m., A5 was arrested and in the presence of P.W.5 and P.W.6, A5 has given his confession. On his confession, weapons used during assault were seized. P.W.12 is the Investigating Officer who took up further investigation and filed a alteration report Ex.P15. The seized articles were sent to Court, which were marked as M.O.1 to M.O.7. Thereafter, on 13.03.2016, charge sheet was filed in this case against the accused. Before the Trial Court, the prosecution has examined witnesses as P.W.1 to P.W.12, marked Ex.P1 to Ex.P15 and M.O.1 to M.O.7. The defence has marked Ex.D1 to Ex.D8. On the conclusion of the Trial, the Trial Court has convicted A1 and acquitted other accused.

4. The contention of the learned counsel for the petitioner is that there was already a civil dispute pending between the petitioner and P.W.1 to P.W.3 over the pathway and to create a defence and right in the Civil Suit, a drama has been enacted and the petitioner has been falsely implicated in the present case. The petitioner was severely assaulted by the witnesses and he took treatment in the Government Hospital, Namakkal. On 11.01.2014, at about 7.00 p.m, the petitioner has lodged a complaint. In the complaint, the injuries sustained by the petitioner have been clearly stated. To escape from the assault committed by P.W.1 to P.W.3, a false complaint has been lodged against the petitioner. From the complaint given by the defacto complainant, it could be seen that P.W.1 to P.W.3 were admitted in the private hospital and P.W.8 is the Doctor who had given treatment to them. Exs.P7 to P9 are the wound certificates of P.W.1 to P.W.3, which is general in nature with no specific mention about the injuries. On the other hand, the petitioner had produced Ex.D6/wound certificate given by the Government Hospital.

5. The learned counsel further submitted that the Lower Court had not adverted to the defence Ex.D1 to Ex.D8. Ex.D1 to D3 are the certificate copy of the complaint given by the petitioner, Ex.D4 is the Advocate Commissioner report, Ex.D6 is the wound certificate, Ex.D7 is the complaint and Ex.D8 is the FIR in Crime No.15 of 2014. The respondent Police has not conducted investigation as per the Police Standing Order. The case of the prosecution is that all the accused have joined into an unlawful assembly and attacked P.W.1 to P.W.3. The Trial Court disbelieving the evidence of P.W.1 to P.W.3, acquitted the other accused and ought to have acquitted the petitioner. He further submitted that P.W.3 is the father of P.W.1 and P.W.2. P.W.4 is the relative of P.W.1. All the witnesses are close relatives, they are motivated and falsely deposed against the petitioner. Other than P.W.1 to P.W.4, there were no other private witnesses in this case. Other witnesses are of official witnesses.

6. He further submitted that the Investigating Officer admits that he is not aware about the counter case. The property in this case were marked as M.O.1 to M.O.7, reached the Court belatedly after three years. From Ex.P13/ Form 91, it could be seen that no M.Os were produced along with it. P.W.1 to P.W.3 are shown as accused in Ex.D8. Further M.O.6/iron road which is said to be used while assaulting the witnesses was not been seized and produced before the Court in the manner known to law. Therefore, the Trial Court ought to have acquitted the petitioner. The Lower Appellate Court without independently considering these aspects had dismissed the appeal.

7. The learned counsel for the petitioner further submitted that on 04.11.2020, the petitioner surrendered before the Chief Judicial Magistrate, Namakkal and he was remanded to Sub-Jail, Athur, Salem.

8. The learned Additional Public Prosecutor submitted that in this case there are three injured witnesses P.W.1 to P.W.3. Ex.P6 is the intimation sent from CM Hospital, Namakkal to the respondent Police. On receipt of such intimation, P.W.9/Special Sub-Inspector of Police visited the hospital, received complaint and registered an F.I.R and thereafter P.W.10/Inspector of Police visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of P.W.7 and P.W.11. On 11.01.2014, A5 was arrested and based on his confession, M.O.1 and M.O.7 were recovered. P.W.8/Doctor, who treated P.W.1 to P.W.3 had given wound certificate, which were marked as Exs.P7 to Exs.P9. On transfer of investigation, P.W.12/Investigation Officer took up further investigation collected the documents, examined the witnesses and filed charge sheet. The Trial Court on considering the evidence of the injured witnesses P.W.1 to P.W.3, the evidence of Doctor/P.W.8 and wound certificates/Exs.P7 to P9 had convicted the petitioner. Aggrieved over the same, the petitioner filed C.A.No.3 of 2020 to set aside the order of the Trial Court and P.W.1 filed C.A.No.39 of 2020 seeking enhancement of punishment imposed on the petitioner. The Lower Appellate Court considering all the materials has dismissed both the appeals by confirming the order of Trial Court.

9. Considering the rival submissions, it is seen that there is already existing dispute over the pathway between the petitioner and the defacto complainant group. There had been exchange of blows between both the groups. The petitioner was also severely injured and took treatment in the Government Hospital. On the same day, FIR was also registered based on the complaint of the petitioner in Crime No.15 of 2014 against P.W.1 and others. Investigating Officer in this case admits that he was not informed about the counter case against the petitioner group. Crime No. 14 of 2014 pertains to the present case. Both the cases were registered on the same day and almost same time. The procedure contemplated as per the Police Standing Order has not been followed in investigating this case. Further, the Trial Court on the same set of witnesses, disbelieving the evidence of P.W.1 to P.W.3 has acquitted A2 to A6 but convicted the petitioner. The Civil dispute between both groups is an admitted fact and there was a pre-existing motive. In view of the same there is possibility of implication. The Trial Court and the Lower Appellate Court had failed to consider Exs.D1 to D8 and no findings were given in this regard. Further, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioner and further, the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/-(rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the Chief Judicial Magistrate, Namakkal, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of every English Calender Month at 10.30 a.m. till the disposal of the appeal.

-sd/-

05/11/2020

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 CHIEF JUDICIAL MAGISTRATE
NAMAKKAL.

2 THE PRINCIPAL SESSIONS COURT,
NAMAKKAL.

3 THE SUPERINTENDENT,
SUB-JAIL, ATHUR, SALEM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
NALLIPALAYAM POLICE STATION,
NAMAKKAL DISTRICT

सत्यमेव जयते
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+1C.C. to M/S.D.SHIVAKUMARAN Advocate on payment of
necessary charges SR NO.7325

Order

in
CRL MP.6512/2020

in
CRL RC.935/2020

Date :05/11/2020

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