



*Crl.M.P.Nos.3868 of 2023, 6845 of 2023
and 7750 of 2020 in Crl.A.Nos.347 and 350 of 2020*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

Crl.M.P.Nos.3868 of 2023, 6845 of 2023 and 7750 of 2020
in Criminal Appeal Nos.347 and 350 of 2020

1.Soundararajan, S/o Perumal
2.Arunkumar, S/o Natarajan

... Petitioners in Crl.M.P.3868/2023

1.Lakshmanan, S/o Senkeni
2.David @ Davidraj, S/o Murugan
3.Balamurugan, S/o.Ezhumalai

... Petitioners in Crl.M.P.6845/2023

1.Satheesh, S/o Ramu
2.Anandharaj, S/o Arulmani
3.Rajkumar, S/oKarunakaran
3.Ganapathy, S/o Kannappan
4.Suman, S/o.Arumugam

... Petitioners in Crl.M.P.7750/2020

-Vs-

State, rep.by
The Inspector of Police
Reddichavadi Police Station
Cuddalore District
(Crime No.107 of 2016)

.... Respondents



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Common Prayer : Petitions under Section 389(1) of Cr.P.C., to suspend the sentence and grant bail to the petitioners / appellants for the conviction and sentence imposed in S.C.No.164 of 2016 dated 30.06.2020 by the I Additional District and Sessions Judge, Cuddalore pending disposal of the Criminal Appeals.

For Petitioners : Mr.S.Saravanakumar
in Crl.M.P.No.3868 of 2023
Mr.S.Kasirajan in Crl.M.P.No.6845/2023
Mr.R.Thamarai Selvan in Crl.M.P.7750/2020

For Respondent : Mr.R.Muniyappa Raj
Additional Public Prosecutor
Assisted by Mr.Sylvester John

COMMON ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

In the main Criminal Appeals ie., Crl.A.No.347 and 350 of 2020, the respective appellants challenged the sentence and conviction made in S.C.No.164 of 2016 dated 30.06.2020 by the I Additional District and Sessions Judge at Cuddalore.

2. There are ten accused in this case. All were convicted for offence punishable under Section 302 IPC and some of them, under Section 302 read with Section 34 IPC. Crl.M.P.No.6845 of 2023 is filed by A1, A2 and A3. Crl.M.P.No.3868 of 2023 is filed by A4 and A5 and Crl.M.P.No.7750 of 2020 is filed by A6 to A10. These petitions have been filed to suspend the sentence.



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3. At the threshold, Mr.S.Kasirajan, learned counsel appearing for A1, A2 and A3 in Crl.M.P.No.6845 of 2023 has submitted that he wants to withdraw the petition in respect of A1 viz., Lakshmanan and he is pressing for other accused ie., A2 and A3. Learned counsel for the petitioners in Crl.M.P.No.7750 of 2020 wants to press the petition for A6 to A10. Mr.S.Saravana Kumar, learned counsel appearing for the petitioners in Crl.M.P.No.3868 of 2023 wants to press the petition for A4 and A5.

4. They made submissions stating that, one of the crucial witness according to the prosecution is P.W.1, who is the father of the deceased, who alone went to the police station immediately after the occurrence and gave the complaint, which has been made as F.I.R., at about 9.00 a.m. on the date of occurrence. Thereafter, the prosecution had taken the case and investigation went on. According to the Investigating Officer, who was examined as P.W.18 and deposed before the trial Court, where he has recorded his evidence stating that on the date of occurrence ie., on 21.05.2016 at about 16:00 Hrs, ie., 4'O Clock in the evening, the Circle Inspector, who was initially investigating the matter, had arrested all the accused near Keezhazhinjipattu Draupadi Amman Temple.

5. However, P.W.1 in his evidence in the cross examination made on behalf of A2, A5, A6, A8 and A9 stated that, when he went to the police station to give the complaint, all the accused were arrested and he saw all the accused, who were in fact identified by the police. This is the first contradiction they pointed out.



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6. In Ex.D1, which is the Accident Register, it has been recorded by the hospital concerned that, A2 has been brought with injury by the respondent police on 21.05.2016 ie., the date of occurrence itself at 8.55 a.m. The very same statement had been recorded in Ex.D1 to state that he was brought with alleged assault by known persons today ie., 21.05.2016 at 8.30 p.m. The word 8.30 p.m., has been corrected as 8.30 a.m. as an error. But, it is made clear that A2 was brought by the respondent police to the hospital on 21.05.2016 itself. This is the second contradiction they pointed out.

7. However, the Investigating Officer has further stated in his cross examination that, A2 though was injured, no one was enquired as to how he sustained injury and the documents pertaining to the treatment given to A2 were available, according to which, he was given treatment at Arupadaiveedu Medical College Hospital on 21.05.2016 at 8.55 a.m. He further stated that the treatment went on upto 10.40 a.m. on 21.05.2016.

8. Pointing out this, the learned counsel for the petitioners state that, when one of the accused had been brought by the police to the Medical College Hospital at 8.55 a.m. , where treatment went on till 10.40 a.m., it cannot be stated by the prosecution that, all the accused were arrested only at 4.00 p.m., on the said date ie., 21.05.2016.



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9. However Mr.R.Muniyappa Raj, learned Additional Public Prosecutor appearing for the respondent Prosecution would contend that, these contradictions are only minor in nature and therefore because of these contradictions, the case of the prosecution cannot be shattered. Therefore, based on these mere contradictions, no conclusion can be arrived at as to the guilt of these accused persons as well as the prosecution's proving the case beyond reasonable doubt, as accepted by the learned Trial Judge.

10. We have considered these submissions made by both sides and have also evaluated the points that have been brought before us.

11. Insofar as these contradictions are concerned, whether it will be fatal to the prosecution case or not cannot be gone into completely at this moment, for which the entire evidence should be gone into and that would be possible only at the time of final hearing.

12. Moreover, these accused have been in incarceration from 13.06.2020 till date and they had been in judicial custody for nearly about one year pursuant to the issuance of Non Bailable Warrant during the time of trial.

13. Since these aspects have to be fully gone into and that may not be possible at this juncture, taking into account that these petitioners / accused had been in jail since



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June 2020, prior to which they have been in judicial custody for about one year, we feel that the sentence made against these accused, except A1, can be suspended.

14. Accordingly, the substantive sentence imposed against the petitioners / appellants herein in S.C.No.164 of 2016 dated 30.06.2020 by the I Additional District and Sessions Judge, Cuddalore is suspended insofar as A2 to A10 are concerned. Insofar as A1 viz., Lakshmanan S/o Senkeni is concerned, the submission made by the learned counsel for the petitioner to withdraw the petition is recorded and accordingly the petition as against A1 is dismissed as withdrawn. The sentence imposed as against the petitioners / Accused 2 to 10 is hereby suspended and they are enlarged on bail on the following conditions:

- (a) The petitioners shall execute a bond each for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Cuddalore.
- (b) 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 number to ensure their entity; and



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(c) The petitioners shall stay at Tirunelveli and sign in the Tirunelveli Town Police Station everyday morning at 10.00 A.M., until further orders.

15 . These Criminal Miscellaneous Petitions are disposed of accordingly.

**(R.S.K.,J.) (K.B.,J.,)
27.07.2023**

KST

To

- 1.Judicial Magistrate No.II, Cuddalore.
- 2.The Inspector of Police
Tirunelveli Town Police Station, Tirunelveli District.
- 3.The Superintendent, Central Prison,
Cuddalore.
- 4.The Public Prosecutor, High Court, Madras.



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