



*Crl.M.P.No.16183 of 2023
in Crl.A.No.1087 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.16183 of 2023

in

Crl.A.No.1087 of 2023

1.Hari @ Haridoss

2.Thirugnansampantham

... Petitioners

Vs.

The State,

Represented by The Inspector of Police,

Kadampuliyur Police Station,

(Crime No.12/2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed against the petitioners/Appellants by the learned I Additional District & Sessions Judge at Cuddalore and enlarge the petitioners on bail.

For Petitioners : Mr.Arun Anbumani

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence passed against them by the learned I Additional District & Sessions Judge at Cuddalore and enlarge the petitioners on bail, pending disposal of the Criminal Appeal.

2.The petitioners/ A1 and A2 in S.C.No.270 of 2016 convicted by the Trial Court by judgment dated 14.09.2023 for offence under Section 326 IPC and sentenced them to undergo Rigorous Imprisonment for a period of Five years and to pay fine of Rs.5,000/- each.

3.The case of the prosecution is that there was previous enmity between A2 and the deceased Arumugam, regarding the estates of Dhakshnamoorthy who is maternal uncle of A2. The deceased Arumugam in an earlier occasion assaulted the said Dhakshnamoorthy. In view of the said hostility, the deceased Arumugam resided in his in-law's house at Pillur Village. While this being so, on 17.01.2016, when the said Arumugam



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along with his sons PW1 and PW2 returned back from Periya Elanthampattu

Village in his two wheeler, the accused 2 and 3 restrained the deceased and assaulted him by caught him by the shirt. The deceased Arumugam tried to escape, at that time, the accused 2 and 3 hit his vehicle and the deceased Arumugam fell down along with PW1 and PW2. The accused 3, 5 & 7 dragged the deceased Arumugam towards the layout side and A5 and A7 attacked Arumugam with wooden log. Further, A2 informed the same to A1 through his mobile and A1 arrived to the scene of occurrence in his two wheeler. All the accused viz., A1 to A8 formed an unlawful assembly with an intention to finish-off the life of Arumugam. A1 stabbed Arumugam with knife in the right rib and thereafter, A2 got the knife from A1 and he also stabbed in the right rib and similarly, A4 also stabbed. A6 assaulted on the backside head of Arumugam with cement block. PW1 and PW2 also injured in the incident. Thereafter, the accused left the place and the said Arumugam died at the scene of occurrence. While fleeing, A1 and A2 started to search for PW5, the close associate of Arumugam to finish him. When they went near Ayyanar Temple, they saw PW5 sleeping there. A1 and A2 caused grievous injury to PW5 by attacking him with wooden log,



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which was witnessed by PW6, his uncle. PW5 taken to hospital by his mother where PW9 given treatment and thereafter, complaint lodged and FIR came to be registered by PW12 on the same date, at about 8 p.m. Thereafter, PW13, the Investigating Officer took up investigation, enquired witnesses from the scene of occurrence and prepared observation mahazar. Since PW13 Investigation Officer transferred, PW14 took up further investigation and completed the investigation and filed charge sheet against eight persons viz., A1 to A8. A1 to A8 were charged for offence under Sections 341, 147, 148, 294(b), 324, 326, 341, 342, 302, 302 r/s 109 IPC.

4. During trial, PW1 to PW14 examined, Ex.P1 to Ex.P30 marked and Mos.1 to 14 produced. On the side of the accused, neither any witness examined nor documents marked. On conclusion of the trial, the trial court acquitted all the accused of all charges, except A1 and A2 for charge under Section 326 IPC and sentenced them as stated above. Against which the present appeal.

5. The contention of the petitioners is that PW5 is the injured witness



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in this case. The case projected against him is highly artificial. Since the petitioners along with others having murdered Arumugam, went in search of PW5 who was the close friend of said Arumugam and thereafter, they found him near the Ayyanar Temple lying down and at that time, A1 and A2 said to have assaulted him. From the evidence of PW6, it is seen that he has stated that A1 and A2 had assaulted PW5 and he was taken in an Ambulance to the hospital and he does not state about what weapon used in the attack and in which part of the body, he was attacked. He also does not state about the presence of PW6 in the scene of occurrence. He also does not state about his mother PW5, who is said to have taken him to the hospital. He stated that at about 4.00 pm, on the same day, Police came to the hospital and recorded his statement. Thereafter, FIR registered. But in the FIR, it is seen that the complaint received only at 8.00 pm, for which PW12, the Sub Inspector of Police in his examination has deposed that the complaint was registered only at 8.00 pm and sent through the Constable and the distance between the Court and the Police Station is only 6 kms. The contention of the petitioners is that the delay of four hours is for the reason to falsely implicate the petitioners and others in this case. No



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explanation given by PW13 the Investigating officer or the Subsequent investigating Officer, PW14 with regard to the delay caused. He further submitted that PW6, uncle of PW5 who is projected as eye witness, in this case states that when he came out from the bathroom, A1 and A2 was hitting the PW5 with a stick and wooden log. In the accident register Ex.P7, PW9, Casualty Doctor records that PW5 was injured with an iron rod. In this case, no iron rod produced as Material object. Further, from the evidence of PW6, it is seen that 17.01.2016 is a festival day where lot of public gathered and playing and enjoying themselves. When there is such a situation, except PW5 and PW6, no other independent witness examined as witness in this case. PW6 admits that at the time of occurrence, before calling the Ambulance, lot of people gathered at the scene of occurrence. Further in this case, the mother of PW5 though said to have accompanied PW5 to the hospital as recorded by PW9 in Ex.P7, she was not examined as witness in this case. PW9 the casualty doctor attached with Panruti Government Hospital admits that there is corrections with regard to the place of occurrence in the accident register Ex.P7. In this case, the trial court convicted the petitioners under Section 326 IPC on the ground that as



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per Section 320 IPC sub clause 7 any fracture or loss of tooth would amount to grievous injury. For proving the grievous injury, there should be any material by way of X ray or scan report that the injured, actually sustained fracture. From the Accident Register copy, there is nothing to confirm that there was any fracture sustained by PW5. He further submitted that the opinion given by PW9 with regard to the treatment taken by the injured in the Government Hospital, Cuddalore for the period between 17.01.2016 and 02.02.2016, the same cannot be considered, since he is not the doctor who treated the injured at that point of time. He further submitted that on demurer admitting the case of the prosecution to be true, then also offence of Section 326 would not be made out.

6. The learned Additional Public Prosecutor on the other hand strongly oppose this petition by stating that A1 and A2 earlier committed murder of one Arumugam using knife along with six others. The murder is with regard to the property dispute. Thereafter, while fleeing from the scene of occurrence, on the way, they went in search of friend of Arumugam and found PW5, Soundarapandian sleeping near the Ayyanar Temple and



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thereafter, without any reason parked their vehicle and assaulted

Soundarapandian indiscriminately who sustained fracture and injuries.

PW6, the uncle of PW5 had come to the rescue who witnessed the assault.

Thereafter, PW5 was rushed to the Government Hospital, Panruti and

thereafter, for further treatment to Cuddalore Government Hospital. PW9,

who is the casualty doctor attached to Panruti Government Hospital had

issued Accident Register/Ex.P7. Ex.P7 is the contemporaneous document

wherein the nature of injuries sustained and the place are clearly recorded.

The doctor admits that though initially in the accident register, the place has

been mentioned as house, later it has been struck out and Ayyanar temple

recorded. PW9 clearly admits that it is his correction, but he failed to initial

the same. The trial court considering the evidence of PW5, PW6 and PW9

and Ex.P7 finds that the injuries sustained to be grievous and the identity of

the accused are not in dispute and the trial court rightly convicted A1 and

A2 and hence, oppose the bail application.

7. Considering the submission, it is seen that in this case, for the first incident all the accused have been acquitted and as regard the second



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incident, which the petitioners herein is said to have attacked PW5 using stick, PW6 is projected as witness to the attack. The evidence of PW6 is highly artificial, he gives explanation that though PW5 sustained blood injury, he lifted him and placed him in the Ambulance, but he had no blood stains attached to him. Further, he admitted that on that day, it was a festival and lot of people gathered and they were engaged in playing and no independent witness examined. The evidence of PW5 is to the effect that A1 and A2 attacked him, with what and where PW5 sustained injuries and there is no particulars. As regards the recording in the accident register, Ex.P7, it is seen that injured was attacked with iron rod. In this case, no iron rod recovered or produced. PW9 is the casualty doctor attached to the Panruti Government Hospital, who referred PW5 to the Cuddalore Government Hospital and none from the Government Hospital, Cuddalore examined. Only the accident register/Ex.P7 produced, neither the wound certificate nor any x- ray, MRI report or any report produced to show that PW5 had sustained fracture, thereby attracting Section 326 IPC in this case. The medical evidence and the ocular evidence are contradictory. Further, in the absence of any medical record, conviction of petitioners for offence under



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section 326 IPC against the petitioners, Section 326 becomes a questionaable one.

8. In view of the same, this court is inclined to grant bail to the petitioners.

9. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners is suspended till the disposal of the appeal and the petitioners are ordered to be enlarged on bail, on condition that they 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 learned I Additional District and Sessions Judge, Cuddalore.

10. Further, the petitioners shall appear before the Trial Court on the first working day of every English Calendar 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 that 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



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in lieu of the date of his absence as directed by the Trial Court.

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11. Accordingly, this Miscellaneous Petition is ordered.

19.10.2023

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To

1. The I Additional District and Sessions Judge, Cuddalore.
2. The Public Prosecutor,
High Court, Madras.
3. The Central Prison, Cuddalore.



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M. NIRMAL KUMAR, J.

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