



CrI.M.P.No.16783 of 2023
in CrI.A.No.838 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2023
PRONOUNCED ON : 19.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CrI.M.P.No.16783 of 2023

in

CrI.A.No.838 of 2023

1.Pillappa
2.Jayamma
3.Osakottappa

... Petitioners

Vs.

The State represented by
The Inspector of Police,
Thally Police Station,
Krishnagiri District.
Cr.No.92 of 2016.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the conviction and sentence imposed on the petitioner in S.C.No.97 of 2021, dated 26.06.2023 on the file of the Additional District and Sessions Judge, Hosur and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

For Petitioners : Mr.C.R.Malarvannan
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners by judgment, dated 26.06.2023 in S.C.No.97 of 2021 by the learned Additional District and Sessions Judge, Hosur and enlarge them on bail pending disposal of the main appeal.

2.The petitioners were convicted by the Trial Court in S.C.No.97 of 2021 by judgment dated 21.06.2023 for the offence under Sections 304(ii) r/w. 34 IPC and sentenced to undergo each ten years rigorous imprisonment. Against which, the petitioners filed the present appeal along with suspension of sentence.

3.During the trial, on the side of the prosecution P.W.1 to P.W.14 examined, Ex.P1 to Ex.P25, M.O.1 to M.O.10 were marked. On the side of the defence, no witnesses examined and no documents marked.

4.The gist of the case is that the deceased Sekar fell in love with



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daughter of 1st and 2nd petitioners and sister of 3rd petitioner, who was a minor and causing disturbance by calling her over phone and following her. This was reprimanded and the said Sekar was warned, despite the same he continued his act of causing disturbance to the minor girl. On 07.03.2016, phone call was made through the minor girl to the said Sekar, who was a resident of Maregoundanapalli village to come to the petitioners' house at Gumlapuram Village. On that day, between 3.00 p.m. to 5.00 p.m, the deceased Sekar was assaulted by the first petitioner using the wooden log on his head, chest, back, hands and thigh, the second petitioner assaulted him with a wooden log on his back and the third petitioner with a heavy stick and with his belt on the back of the deceased with an intention of causing death and the said Sekar succumbed to multiple injuries and shock due to hemorrhage. Thereafter, the first and second petitioners concealed the wooden log in their house and the third petitioner concealed the heavy stick in a bush in the garden. The state of the deceased Sekar was informed to P.W.1/father of the deceased and his relative P.W.2, thereafter he was taken to Sparsh Hospital where P.W.1 and P.W.2 were informed about the death of the said Sekar. P.W.1 lodged a complaint to P.W.12 who registered a



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case in Crime No.92 of 2016 for the offence under Section 302 IPC and sent the FIR to the Court.

5.P.W.13/Investigating Officer took up the investigation, examined the eye witnesses present near the scene of occurrence, prepared rough sketch/Ex.P18 and seized the articles present in the scene of occurrence. Thereafter, P.W.13 conducted inquest and sent the body for postmortem. P.W.10/Doctor conducted Postmortem. P.W.8/Village Administrative Officer, Gumlapuram Village on coming to know about the incident went to the house of the accused where in his presence M.O.1 to M.O.3 were recovered and recorded in the observation mahazar/Ex.P2 and seizure mahazar/Ex/P4. On 11.03.2016, the first and third petitioner surrendered before P.W.8 and gave an extra judicial confession which is marked as Ex.P5 and Ex.P6. Along with the report/Ex.P7, P.W.8 produced the accused to the respondent police. Again A1 and A3 gave a confession Ex.P8 and Ex.P9 and based on their confession, M.O.4 and M.O.5, two wooden logs were seized. Thereafter on 19.07.2016 the second petitioner/A2 was arrested, gave a confession/Ex.P12 and based on the



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confession, seizure was made. After collecting the Postmortem report, chemical analysis report and recording the statement of witnesses, charge sheet was filed before the Lower Court for the offence under Section 302 r/w. 34 IPC. The Trial Court on conclusion of trial convicted the petitioners as stated above.

6.The contention of the learned counsel for the petitioners is that the respondent police projected a case of murder wherein P.W.5 to P.W.7 were projected as eye witnesses. P.W.1 to P.W.4 are the relatives of the deceased were examined to the fact that P.W.1 and P.W.2 were informed about injuries sustained by the said Sekar and the injured taken to Sparsh Hospital where he was pronounced brought dead. Thereafter, P.W.1 lodged a complaint. P.W.3 was examined for the fact that the deceased Sekar was beaten to death in the house of the accused and P.W.4/brother-in-law was examined to confirm that the deceased requested and took his bike which was seized near the house of the deceased. In this case, all the independent witnesses P.W.1 to P.W.7 not supported the case of the prosecution and declared hostile. Hence, the Trial Court proceeded against the petitioners as



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a case of circumstantial evidence. The Trial Court primarily relied on the recovery of bike and other objects from the house of the petitioners and the extra judicial confession given by the accused before P.W.8/Village Administrative Officer. P.W.10/Postmortem Doctor confirms that the injuries sustained would not be due to any accident and in Ex.P25/Medical report which was marked through P.W.14/Technician of Sparsh Hospital, it is recorded that the deceased was brought with injuries and declared dead. Finally Ex.P21/Forensic Lab report was marked to prove that the blood in the cloth/M.O.1 which was used for wiping the blood in the house of the accused, answered 'B' positive and the accused were unable to give any explanation for the above circumstances. The learned counsel for the petitioner would submit that the Lower Court ought to have seen that in a case of circumstantial evidence, the prosecution has to establish the chain of circumstances by linking one after another leading to irresistible conclusion that the accused alone committed the offence and none else. In this case, FIR registered including the minor girl, charge sheet filed and the minor was proceeded in the Juvenile Court.



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7.He would submit that the specific case of the prosecution is that the minor called the deceased Sekar in her mobile and when the deceased Sekar came to the house of the accused, assault is said to have committed. But in this case, no call details of both the minor girl and the deceased were produced. He would further submit that in this case, the Lower Court placed reliance on the extra judicial confession of A1 and A3, Ex.P5 and Ex.P6 which is not proper. It is settled position that extra judicial confession is a weak piece of evidence which has to be corroborated with materials but in this case, there is no such corroboration. He further submitted that there is nothing to show that A1 to A3 knew the Village Administrative Officer, gaining confidence appeared before him and gave such confession. Further, the admitted position is that the Village Administrative Officer was a witness for the observation mahazar on 08.03.2016 and FIR already registered for the offence under Section 302 IPC in Crime No.92 of 2016, hence the alleged confession statements/Ex.P5 and Ex.P6 cannot be termed as extra judicial confession. He further submitted that P.W.4, the owner of the bike had not supported the case of the prosecution and hence, the deceased Sekar coming to the house of the



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accused in P.W.4 bike not proved. P.W.6 is the person who is said to have informed P.W.1 about the deceased being tied in the house of the accused and assaulted but no other witness have stated about this circumstance. The evidence of P.W.14/Technician of Sparsh Hospital that P.W.2 brought the deceased Sekar to the hospital is also not proved since P.W.2 not supported the case of the prosecution. He further submitted that the Lower Court placed reliance on Ex.P25/Accident Register of Sparsh Hospital which was marked through P.W.14, who is not the Doctor who examined the deceased in the hospital and recorded Ex.P25, hence P.W.14 is not the competent person to speak about Ex.P25. He would further submit that Ex.P21/Forensic Lab report confirming that the blood found in M.O.1 is 'B' Positive which is that of the deceased is also of no relevance. The Trial Court misread the evidence and by wrong appreciation, convicted the petitioners. The conviction is not sustainable. Hence, he prayed for suspension of sentence.

8.The learned Additional Public Prosecutor filed a counter stating that the prosecution to prove its case examined 14 witnesses and marked 25



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exhibits and 10 material objects. In this case P.W.1 to P.W.7 who are the father, relatives of the deceased and the witnesses present near the scene of occurrence have been won over. Hence, the Trial Court on the evidence of P.W.8/Village Administrative Officer before whom A1 and A3 surrendered two days after the occurrence, gave voluntary confession statement and thereafter the accused were produced before the Investigating Officer before whom another confession statement was given by them confirming the earlier confession. P.W.9 is the Village Administrative Officer, who was incharge of Gumlapuram, in whose presence A2 was arrested on 19.07.2016 and based on her confession, recovery of stick was made. He would submit that though P.W.5 to P.W.7 are the eye witnesses for the assault by the petitioners, they had not supported the case of the prosecution. P.W.14 confirms that the deceased was brought to the hospital by P.W.2 and the same was recorded in Ex.P25. P.W.10/Doctor given a report Ex.P14 confirming the injuries on the head, face and all over the body of the deceased and he confirms that injuries are not due to any accident. P.W.11 is Constable who was deputed to collect the body from Sparsh Hospital, Bangalore to the Government Hospital, Denkanikottai. On the complaint of



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P.W.1, P.W.12 registered a case and thereafter, P.W.13 took up the investigation. From M.O.1 to M.O.3, which are the blood stained cloth, belt and pair of slippers of the deceased, recovered from the house of the petitioners confirms the assault on deceased by the accused. Thus, the Trial Court on the evidence of P.W.8 to P.W.14 and based on the extra judicial confession had rightly found that the prosecution had proved the case by circumstantial evidence and convicted the petitioners. Hence, he prayed for dismissal of the petition.

9.Considering the submissions made and on perusal of the materials, it is seen that the motive of the case is that the deceased was constantly calling and harassing the minor daughter of petitioners 1 and 2. The deceased was warned by the petitioners and thereafter on 07.03.2016, the minor girl called the deceased over phone to come to her house, the deceased took the bike of his brother-in-law/P.W.4 and came from Maregoundanapalli Village to the petitioners' house at Gumlapuram Village. At that time, the deceased Sekar is said to have been attacked with wooden log by the petitioners and done to death. In this case, no phone call or



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phone particulars or any materials produced. Further, P.W.1 to P.W.7, independent witnesses not supported the case of the prosecution. The extra judicial confession/Ex.P5 and Ex.P said to have been given to P.W.8 cannot be acted upon. P.W.8 admits that he does not know Kanada language and the accused had given a confession in Kanada which was translated by his Assistant and it was written by P.W.8. Further, the Village Assistant, namely, Mr.Syed Jaffer Sahib who did the translation not examined, P.W.8 admits that his Assistant does not know to read and write Tamil. Added to it, P.W.8 admits that he had not taken copies of Ex.P5 and Ex.P6 sent to his superiors which is one of the guidelines and condition which was not followed, hence it has no credibility. In view of the same, the Lower Court placing reliance on Ex.P5 and Ex.P6 is not proper, further recovery made thereafter becomes doubtful. P.W.14, Technician from Sparsh Hospital, Bangalore was examined Suo motu by the Trial court and Ex.P25/Accident Register was marked through him. But the Doctor who recorded Ex.P25 not examined, Ex.P25 not marked as document in the manner known to law. Thus, the primary documents, namely, Ex.P5, Ex.P6, Ex.P25 and evidence of P.W.8, P.W.9 and P.W.14 are cast with shadows and the chain of



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circumstances become weak which needs re-look and re-appreciation.

10. 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 each shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two common sureties for all the petitioners who hail from one family for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Hosur.

11. Further, the petitioners 1 and 3/A1 and A3 shall appear before the Trial Court once in three months on the first working day at 10.30 a.m. until the disposal of the appeal and if they were 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 in lieu of the date of their absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

19.12.2023

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To



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- 1.The Additional District and Sessions Judge,
Hosur.
- 2.The Inspector of Police,
Thally Police Station,
Krishnagiri District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Superintendent,
Special Women Prison,
Vellore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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Pre-delivery order made in

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