



CRL MP(MD) No.6414 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Fifth day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
and
The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL MP(MD) No.6414 of 2023
IN
CRL A(MD) No.328 of 2023

PANDI @ SARAVANAKUMAR

... APPELLANT/SOLE ACCUSED

Vs

THE INSPECTOR OF POLICE
ARUPPUKOTTAI TOWN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.
CRIME NO. 718 OF 2017

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed against the petitioner and release the petitioner on bail pending disposal of the main criminal appeal before this Honble court against the Judgment of the Hon'ble Additional District and Sessions Judge, Virudhunagar District in S.C.No.62 of 2018 dated 13.09.2022.

PRAYER IN CRL.A(MD).328/2023:

Pleased to call for the entire records conneted with the judgment rendered the Hon`ble Additional District and Sessions Judge, Virudhunagar in S.C.No.62 of 2018 dated 13.09.2022 and set aside the same and consequently acquit the appellant.



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Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.PRAKASH.R, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by M.NIRMAL KUMAR, J.)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner, by judgment dated 13.09.2022, passed in S.C.No.62 of 2018, on the file of the Additional District and Sessions Judge, Virudhunagar, and to enlarge the petitioner/sole accused on bail pending disposal of the above appeal.

2.The petitioner is sole accused in S.C.No.62 of 2018 before the Additional District and Sessions Judge, Virudhunagar, and vide judgment dated 13.09.2022, he was convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 I.P.C. Challenging the aforesaid conviction and sentence, the petitioner filed CrI.A.(MD)No.328 of 2023 along with the instant Criminal Miscellaneous Petition, seeking suspension of sentence and bail.

3.The brief facts of the case are that, P.W.1 – Bama, mother of the deceased Mahesh lodged a complaint on 01.10.2017 at about 02.10 p.m., informing that his son was done to death. Further, P.W.1, in her complaint, stated that on 30.09.2017, her



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son Mahesh, who was working as Mason, gone to work and did not return back to home. Immediately, on the next day, i.e., on 01.10.2017, which happened to be a Sunday, when P.W.1 searched him, at about 11.00 a.m., Senthilkumar (P.W.8), Centring Contractor, informed her that when he went to the house building of one Murugan, for cutting iron bars, he saw the dead body of her son lying in a pool of blood. Immediately, P.W.1 and the brother of the deceased P.W.2 went to the Police Station and lodged complaint [Ex.P1].

3.1. Based on the complaint lodged by P.W.1, P.W.16 Sub-Inspector of Police registered a case in Crime No.718 of 2017 for the offence under Section 302 I.P.C. and placed the same before P.W.17, Inspector of Police. Upon receipt of the same, P.W.17 Investigating Officer commenced his investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.14) in the presence of P.W.9.

3.2. P.W.2 - Ganesan is the brother of the deceased and P.W.3 - Chitradevi is the wife of the deceased.

3.3. During investigation, P.W.4 Isakkimuthu, neighbour stated that on 30.09.2017 at about 09.00 p.m., he heard loud noise from the building of Murugan and he went inside the building, where he saw the petitioner/accused was holding an iron rod and both the accused and the deceased were quarrelling each other. He



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pacified them and left the scene of occurrence.

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3.4. P.W.5 - Sundaravadivel, a chance witness, deposed that when he was standing in front of a Medical shop, he saw both the accused and the deceased quarrelled in loud noise and they were going towards the building.

3.5. P.W.6 Tamilarasan, a Petty shop owner, deposed that he saw the accused and the deceased were fighting in front of his shop and thereafter, both were entering the ongoing construction site of Murugan, where there was a long quarrel between them. P.W.4 came to the spot, enquired, pacified and separated both of them. After 45 minutes, P.W.6 saw the accused coming out of the building in an agitated move.

3.6. P.W.7 - Umanath, Auto driver, deposed that on 30.09.2017 at 11.00 p.m., when he was in conversation with one Ganesan, he saw the accused crossed them in an agitated move.

3.7. P.W.8 - Senthilkumar, Centring Contractor, who first visited the scene of occurrence, seen the deceased and informed the same to P.W.1 mother of the deceased.

3.8. P.W.9 - Rajendrakumar is the witness to the Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.14).

3.9. P.W.10 - Alagumeenraj, Village Administrative Officer is the witness to the confession statement of the accused and the admissible portion of the confession



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statement of the accused is marked as Ex.P.4.

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3.10. P.W.11 – Minitha and P.W.13 – Vairamuthu are Scientific Officers from Forensic Science Department.

3.11. P.W.12 – Irudiappan is the building contractor of the building of Murugan.

3.12. P.W.14 – Dr.Amarnath conducted postmortem on the body of the deceased.

3.13. P.W.15 – Muruganantham is the Finger Print Expert.

3.14. P.W.16 – Suresh Kumar received Ex.P.1 complaint and registered Ex.P.13 F.I.R against the petitioner/accused under Section 302 I.P.C.

3.15. P.W.17 – Balamurugan, Inspector of Police, is the Investigating Officer in the case.

3.16. During trial, on the side of the prosecution, P.W.1 to P.W.17 examined, Ex.P.1 to Ex.P.19 and materials objects M.O.1 to M.O.7 marked. On the side of the accused, no witness was examined and no document was marked. On conclusion of trial, the Trial Court convicted and sentenced the petitioner/accused as stated above.

4. The contention of the learned counsel for the petitioner is that, it is a case of circumstantial evidence and the prosecution has not proved the case beyond reasonable doubt. In this case, the chain of link is not complete confirming to the double test leading to inference that it is the petitioner/accused alone committed the



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above offence. The case unravels on the evidence of P.W.8, Centring Contractor, who visited the scene of occurrence, found the dead body and informed the same to P.W.1 and P.W.2. P.W.4 is the neighbour, who said to have enquired both the accused and the deceased on 30.09.2017 at about 09.00 p.m. for the quarrel between them and saw the petitioner/accused with iron rod. It is the case of the prosecution that both the petitioner/accused and the deceased gone to the building for consuming liquor, at that time, quarrel arose. P.W.6 Petty shop owner states that though he saw both of them quarrelling in the road, which is confirmed by P.W.5, thereafter, what happened, there is no link. P.W.6 states that he saw P.W.4 pacified them and separated the accused and the deceased from the fight. P.W.4 had not stated anything about the presence of P.W.6 and hence, the presence of P.W.6 in the scene of occurrence is highly doubtful. Further, the evidence of P.W.6 is that within 45 minutes, i.e., at about 09.15 p.m. on 30.09.2017, the petitioner/accused came out of the building in an agitated move. P.W.7 Auto driver states that he had seen the petitioner/accused at about 11.00 p.m. on the same day in an agitated move. The evidence of both the witnesses are highly contradictory and unbelievable.

4.1. The learned counsel further submitted that the other circumstance against the petitioner/accused is that, a chance finger print available in the Brandy Bottle [M.O.5], which was seized from the scene of occurrence, tallied with his finger print.



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The evidence of P.W.9, who is the witness to the Observation Mahazar [Ex.P.2] and Seizure Mahazar [Ex.P.3], is that all the articles were seized from the scene of occurrence near the body of the deceased. He admits that he had not entered into the scene of occurrence and all recoveries were made by the Police and thereafter, he affixed his signature alone. P.W.17 Investigating Officer, in his cross-examination, admitted that the brandy bottles and use and throw paper cups recovered from the lane outside the building. This vital contradiction snapped the chain of link against the petitioner. The other circumstance is, the recovery of shirt [M.O.7]. Ex.P.9 Serology Report confirms that it is only human blood and nothing more. Further, the Postmortem Report of P.W.14 and the Vicera Report confirm that there is no presence of alcohol, which cuts the root of the case of the prosecution. In this case, there is no iota of evidence against the petitioner. He further submitted that the petitioner is in continued incarceration of more than 6 ½ years and hence, he prayed for suspension of sentence.

5. Per contra, the learned Additional Public Prosecutor submitted that both the petitioner/accused and the deceased were centring workers and used to have liquor together. The petitioner/accused used to demand liquor from the deceased and the deceased had complained about the same to others, which the accused took offended, threatened the deceased not to spread tantrum against him. P.W.1 and P.W.2



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confirms the same. P.W.5 and P.W.6, who are the chance witnesses, stated that they saw the accused and the deceased quarrelling each other and entering the building of one Murugan on the night of 30.09.2017 and thereafter, the accused alone leaving the place, which is confirmed by P.W.7. P.W.4 neighbour of the construction site, on hearing the noise, gone there, saw the accused and the deceased were quarrelling each other. He pacified them and left the scene of occurrence. On the next day, the deceased was found dead with injury on his head and an iron rod near the body with bloodstains. Thereafter, the petitioner/accused was arrested on 02.10.2017 and based on his confession, his bloodstained shirt [M.O.7] recovered, for which, no explanation offered by him. Further, the Finger Print Expert P.W.15 confirms the traces of finger print of the accused in the Brandy bottle, which was recovered from the scene of occurrence. Thus, the prosecution proved the chain of events with evidence. The Trial Court, on analysing the evidence in proper perspective, rightly convicted the petitioner/accused. He further submitted that the judgment of the Trial Court is of reasoned one and hence, he strongly opposed the grant of bail.

6. We have heard Mr.R.Prakash, learned counsel for the petitioner and Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent/State and perused the materials available on record.

7. Considering the aforesaid submissions and on perusal of materials, it is seen



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that it is a case of circumstantial evidence. P.W.9, who is the witness to the Observation Mahazar and in whose presence the Brandy bottles [M.O.5] recovered, in which, the finger prints of the petitioner/accused are available, states that all the articles available in the scene of occurrence were recorded in Ex.P.3 and seized inside the construction site. However, P.W.17 Investigating Officer in his evidence admits that the Brandy bottles and use and throw cups were seized from the lane, outside the building, which is vital contradiction. Further, the medical evidence and the visceral report confirms that there is no alcohol. The evidence of P.W.4 and P.W.6 is that both were quarrelling and entered the construction site to have liquor. Further, the evidence of P.W.4 and P.W.6 is contradictory to each other. There are vital contradictions for snapping the chain of events. Further, the petitioner is in continued incarceration of more than 6 ½ years. Moreover, the appeal is not likely to be taken up in the near future and that there are arguable points in favour of the petitioner herein, the petitioner is entitled for the relief of suspension of sentence.

8. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner on the following conditions:-



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- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Virudhunagar.
- (ii) The petitioner 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 he is not able to appear before the Trial Court on any 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.

sd/-

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28/08/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SMN2

TO

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
VIRUDHUNAGAR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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3 THE INSPECTOR OF POLICE
ARUPPUKOTTAI TOWN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.PRAKASH.R Advocate SR.No.12840

ORDER
IN
CRL MP(MD) No.6414 of 2023
IN
CRL A(MD) No.328 of 2023
Date :25/08/2023

SA/SAR. /28.08.2023/11P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.