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

Wednesday, the Thirtieth 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.7131 of 2023
in
CRL A(MD)No.370 of 2023

A.PERUMALSAMY ... PETITIONER/ APPELLANT/ ACCUSED No.1

AT PRESENT CONFINED AT
CENTRAL PRISON,
MADURAI AS CONVICT PRISONER

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
THIRUCHULI POLICE STATION,
VIRUDHUNAGAR DISTRICT.

CRIME NO. 194/2017 ... RESPONDENT/RESPONDENT/COMPLAINANT

Criminal Miscellaneous 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 on the petitioner / Appellant / Accused No.1 namely A.Perumalsamy son of Alakarsamy by the learned Additional District and Sessions Judge, Virudhunagar in S.C No. 56 of 2018 dated 08.03.2023 and enlarge the petitioner/Appellant/Accused on bail pending disposal of the above Criminal Appeal.

PRAYER in CRL A(MD)No.370 of 2023:

To call for the records related to impugned judgment dated 08.03.2023 made in S.C.No.56 of 2018 on the file of the Additional District and Sessions Judge, Virudhunagar and set aside the same.



Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.SARAVANAN, Advocate for M/S.MUNEESWARAN.B, Advocate for the petitioner and of M/s.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/A1, by judgment dated 08.03.2023, passed in S.C.No.56 of 2018 on the file of the learned Additional District and Sessions Judge, Virudhunagar, and to enlarge the petitioner/A1 on bail pending disposal of the above appeal.

2.The petitioner is Accused No.1 in S.C.No.56 of 2018 before the learned Additional District and Sessions Judge, Virudhunagar and vide judgment dated 08.03.2023, he was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, 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.370 of 2023 along with the instant Criminal Miscellaneous Petition, seeking suspension of sentence and bail.

3.The brief facts of the case is that, P.W.1 – Alagammal, sister of the deceased Gopalsamy, lodged a complaint on 21.06.2017 stating that while she was sitting near the house of Gopalsamy, the petitioner along with his mother and aunt came there



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with wooden log and sticks, abused Gopalsamy and restrained him from moving away, the petitioner/A1 gave a blow on the front side head of the deceased with wooden log [M.O.1]. When P.W.1 attempted to separate them, the petitioner's mother and aunt restrained her and beaten with sticks. Thereafter, the petitioner/A1 pushed the deceased, he fell down on the road and sustained injuries on the back of his head. This was witnessed by P.W.6 to P.W.10. Thereafter, P.W.1 and others took the injured Gopalsamy to Government Hospital, Aruppukottai, in 108 Ambulance, where P.W.20 Dr.Amarnath treated him on 21.06.2017 at 07.45 p.m. and referred him to Government Rajaji Hospital, Madurai. On the same day, at about 08.15 p.m., P.W.13 Ashokbabu, Sub Inspector of Police, attached to the respondent Police Station received information about the occurrence from the Government Hospital, Aruppukottai. When he went to the hospital at 09.00 p.m. he was informed that Gopalsamy was taken to Government Rajaji Hospital, Madurai. Then, he went there, recorded the statement of P.W.1 [Ex.P.1] at about 23.30 hours, returned to the Police Station on 22.06.2017 at 04.30 a.m., and registered a case in Crime No.194 of 2017 for the offences under Sections 294(b), 323, 324, 341, 307 and 506(ii) I.P.C. Ex.P.6 is the First Information Report. Then, he sent the F.I.R to the Court and higher officials.

3.1. Immediately, on receipt of the F.I.R., P.W.17 - Rajesh Kannan, Inspector of Police took up investigation, visited the scene of occurrence on 22.06.2017 at about



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06.00 a.m., prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.7) in the presence of P.W.9 and P.W.22. He recovered bloodstained soil and soil without bloodstains under the cover of Mahazar Ex.P.3 and he examined the witnesses P.W.1 to P.W.9 and P.W.22 and on the same day, at about 12.30 p.m., arrested all the accused. In the presence of P.W.12 – Ananthakumar, Village Administrative Officer and Kavitha, Village Assistant, confession was recorded. Based on the confession, Wooden log (M.O.1) and Sticks (M.O.2 and M.O.3) hidden behind the toilet in the house of the petitioner/ A1 were recovered under Ex.P.5 Mahazar. On the same day, at about 05.45 p.m., the Investigating Officer received information that the injured Gopalsamy died. On 23.06.2017 at 06.00 a.m., P.W.17 conducted inquest on the body of the deceased in Government Rajaji Hospital, Madurai, sent the body for postmortem, altered the Sections of law and sent alteration report to Court.

3.2. P.W.18 - Dr.Sathasivam conducted postmortem on the body of the deceased on 23.06.2017 at 12.20 p.m., issued postmortem certificate (Ex.P.12) and final opinion (Ex.P.13) stating that the deceased died due to head injury.

3.3. Thereafter, P.W.17 collected bloodstained lungi of the deceased and sent the same for examination to Regional Forensic Science Laboratory. Ex.P.9 is the Biology Report, Ex.P.10 is the Toxicology Report and Ex.P.11 is the Serology Report. On his



transfer, P.W.17 handed over the case records to one Mariappan, Sub-Inspector of Police, who laid charge sheet in this case.

3.4. During trial, on the side of the prosecution, P.W.1 to P.W.22 were examined, Ex.P.1 to Ex.P.15 and material objects M.O.1 to M.O.6 were 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/A1 as stated above. The mother and aunt of the petitioner / A2 and A3 were acquitted.

4. The contention of the learned counsel for the petitioner is that the deceased was in a drunken state, creating trouble in the area and picking up quarrel with others, which is confirmed by the evidence of P.W.5 - Vijayalakshmi, wife of the deceased Gopalsamy. P.W.1 and P.W.6, sister and daughter-in-law of the deceased Gopalsamy, respectively, has given exaggerated versions. They cannot be eyewitness and they hail from different Village. The other eyewitness projected by the prosecution are close relatives of the deceased and there are contradictions in their evidence. There was a pathway dispute between the deceased Gopalsamy and the petitioner's father, who are cousins. Taking advantage of the pathway dispute, the petitioner is falsely implicated in this case.

4.1. The learned counsel further submitted that the evidence of P.W.6 is found to be false and hence, the Trial Court rejected her evidence. The evidence of P.W.1 is



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with exaggeration and contradictions. The Trial Court though admits the same, but places reliance in part and finds corroboration with the evidence of P.W.10 - Meenal, neighbour. In her evidence, P.W.10 deposed that when she was feeding the cattle in her cattle shed, she saw the accused coming from north and the deceased Gopalsamy coming from south, suddenly, a fight arose and P.W.1 came later to the scene of occurrence. On the contrary, P.W.1 in her evidence deposed that the petitioner along his mother and aunt came to the house of the deceased Gopalsamy, picked up quarrel, hit and beaten the deceased in front of his house. From the Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.7), it is seen that the occurrence had taken place on the road. There is no concrete evidence with regard to the place of occurrence.

4.2. The learned counsel further submitted that if at all the case of the prosecution has to be taken as true, the act of the petitioner would come under Section 324 I.P.C. and not under Section 302 I.P.C. It is single blow said to have been inflicted on the deceased with wooden log. The doctor's evidence confirms that there was an injury on the forehead and further, due to sudden fall of the deceased, he sustained injury on occipital region. The deceased was in a drunken state as proved by Ex.P.15 Accident Register, which is also confirmed by Ex.P.10 Toxicology Report and the evidence of P.W.5 wife of the deceased. Further, the Trial Court disbelieved



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the evidence as against A2 and A3, on the same analogy, the petitioner ought to have been acquitted. In any event, the conviction under Section 302 I.P.C. is not sustainable.

5. Per contra, the learned Additional Public Prosecutor submitted that the identity of the accused is not disputed. The accused and the deceased are close relatives and they have pathway dispute, which is confirmed by the evidence of P.W.10 and other witnesses. From the Rough Sketch (Ex.P.7), the deceased's house is on the southern side and the accused's house is on the northern side and there is a pathway leading between their houses. There is a dispute with regard to the pathway. It is the petitioner/A1, who along with his mother and aunt/A2 and A3 went to the house of the deceased, picked up quarrel, hit and assaulted him with wooden log (M.O.1) and sticks (M.O.2 and M.O.3). The said assault was witnessed by P.W.1 to P.W.8. There might be some contradictions between the evidence of witnesses, which is quite natural and the same would confirm the truthfulness of the witnesses. P.W.1 was sitting along with her brother Gopalsamy at the time of attack, which was witnessed by P.W.10, neighbour. The evidence of both the witnesses corroborated each other. The injured was immediately taken to Government Hospital without any loss of time, where he was given first aid, which was confirmed by P.W.20. Thereafter, he was referred to Government Rajaji Hospital, Madurai,



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where he succumbed to the injuries. The evidence of P.W.18 and P.W.20 confirmed the same and they issued Postmortem certificate (Ex.P.12) and Accident Register (Ex.P.15) respectively. The doctors' evidence is in conformity with the prosecution case. The deceased died due to the injury sustained by him during the attack and the injuries are severe in nature. There is a contusion on the mid occipital region and haemorrhage caused to the brain. In this case, all the witnesses supported the case of prosecution.

5.1. The learned Additional Public Prosecutor further submitted that the Trial Court, on analysing the evidence, finding that there is no conspiracy as well as there is no material to show that A2 and A3 caused any injury to the deceased, acquitted them from the case. On the ocular and medical evidence, the Trial Court rightly convicted the petitioner/A1 for the offence under Section 302 I.P.C. and hence, he strongly opposed the grant of suspension of sentence.

6. We have heard Mr.C.M.Mari Chelliah Prabhu, learned counsel assisted by Mr.Saravanan, learned counsel for the petitioner and Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent.

7. Considering the aforesaid facts and circumstances of the case and also considering the submissions made by the learned counsels on either side, it is not in dispute that the petitioner and the deceased are close relatives. There seems to be a



wordy quarrel due to pathway dispute. P.W.10 states that initially, it was the deceased, who attacked the petitioner/A1 with wooden stick, which got broken and thereafter, the petitioner/A1 hit the deceased with wooden log on his head, due to which, the deceased sustained injury. Prior to attack, there was quarrel between them. Further, it is seen that the deceased consumed liquor beyond the limit and he was in intoxicated condition, creating trouble, picking up quarrel, which was confirmed by P.W.5, wife of the deceased. Further, in Ex.P.15 Accident Register, it is recorded that the deceased was attacked by five persons, three female and two male and he was found under the influence of alcohol. There is no answer or explanation for this recording. From the overt act of the petitioner, it is clear that the conviction under Section 302 I.P.C. may not be sustainable and the same can be modified.

8. In view of the above, this Court is inclined to entertain this petition and to suspend the sentence imposed against the petitioner / Accused No.1. Accordingly, this petition is ordered and the imprisonment ordered by the trial Court through the impugned judgment is suspended subject to the following conditions:-

(i)The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate Court, Thiruchuli; and



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(ii) The petitioner shall appear before the Judicial Magistrate Court, Thiruchuli, once in a month on the first working day of every English Calendar month at 10.30 a.m. until further orders and if he is not able to appear before the said Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the said Court on any other day in lieu of the date of his absence, as directed by the said Court.

sd/-

30/08/2023

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31/08/2023

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

LM/SMN2

TO

- 1 THE JUDICIAL MAGISTRATE,
THIRUCHULI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 3 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VIRUDHUNAGAR DISTRICT.
- 4 THE INSPECTOR OF POLICE
THIRUCHULI POLICE STATION, VIRUDHUNAGAR DISTRICT.



5 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

+2 CC to M/s.B.MUNEESWARAN, Advocate (SR-12983[I] dated 31/08/2023)

ORDER
IN
CRL MP(MD) No.7131 of 2023
in
CRL A(MD)No.370 of 2023
Date :30/08/2023

SS/DD/31/08/2023/11P/9C

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