



CRL MP(MD) No.8877 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.8877 of 2023
IN
CRL A(MD) No.432 of 2022

AJITH KUMAR

... PETITIONER/ APPELLANT/ ACCSED 1

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
GUDALUR NORTH POLICE STATION,
THENI DISTRICT.
CRIME.NO.271 OF 2016

... 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 in S.C.No. 64/2017 dated 27/04/2022 on the file of the Additional District Judge, (FTC) Theni and enlarge him on bail till the disposal of the Appeal.

PRAYER IN CRL.A(MD).432/2022:

Pleased to call for the records relating to the judgment passed in SC.No.64/2017 dated 27.04.2022 on the file of the learned Additional District and Sessions Judge, (FTC) Theni and set aside the same and acquit the Appellant/ Accused No.1 to 3 from all the charges levelled against them.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.GOPALAKRISHNA

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) No.8877 of 2023

LAKSHMANA RAJU, Senior Advocate for M/S.RISHWANTH S G L, 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 27.04.2022, passed in S.C.No.64 of 2017, on the file of the Additional District Judge (FTC), Theni, and to enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner is A1 in S.C.No.64 of 2017 before the Additional District Judge (FTC), Theni, and vide judgment dated 27.04.2022, he was convicted and sentenced as under:-

Conviction under Section	Sentence
Section 341 I.P.C.	To undergo simple imprisonment for one month.
Section 302 I.P.C.	To undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year.

Both the sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentences, the petitioner filed CrI.A.(MD)No.432 of 2022, the instant

Criminal Miscellaneous Petition seeking suspension of sentence and bail.



CRL MP(MD) No.8877 of 2023

WEB COPY

3. Heard Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel for the petitioner and Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the respondent/State.

4. The brief facts of the case are that, P.W.1 - Periyasamy, the father of the deceased lodged a complaint on 25.10.2016 at the early hours, informing that his younger son namely, Chellapandi, was done to death and his wife namely, Muthupillai [P.W.2] was attacked by A1 to A4. A2 and A3 are the parents of A1. A4 younger brother is a juvenile. The accused are residing in the nearby street of P.W.1. On 01.05.2016, his son Chellapandi and one Anandan, S/o.Uthiran of Surulipatti had gone to take bath in the stream. At that time, Ajithkumar (A1) had come there along with his friend one Manoj, S/o.Ayyan where they had a quarrel. Thereafter, on 02.05.2016, when his son went to take bath along with his friend, A1 and his friend picked up quarrel with them. The friend of the deceased namely, Anandan abused and warned A1 and his friend Manoj. Keeping the same in mind, on the same day, at about 04.00 p.m., A1 along with his friend entered the house of P.W.1 and damaged certain household articles with an Aruval, for which, the deceased Chellapandi gave a complaint with the Gudalur North Police Station. Thereafter, on 22.10.2016, when the deceased Chellapandi was riding his two wheeler, he accidentally, hit the two wheeler of A1, and the two wheeler of A1 fell down.



CRL MP(MD) No.8877 of 2023

WEB COPY

4.1. Keeping this in mind, on 24.10.2016 at 08.00 p.m. when the deceased had gone to a shop and his mother namely, Muthupillai [P.W.2] was coming from north to south, at that time, in front of A1's house, A1 to A4 who were standing there, started to abuse the deceased Chellapandi. While P.W.2 mother of the deceased questioned them for such an abuse, A1 also pleaded with them to forget the past incidents. At that time, P.W.2 was abused and hit. While A2 and A3 caught hold of the deceased Chellapandi, A1 inflicted cut injuries on the neck, left shoulder, left hand wrist, chest, abdomen and all over the body of the deceased with a sickle, owing to which, the deceased fell down and died on the spot. P.W.1 and P.W.2 father and mother of the deceased, who were present in the scene of occurrence were helpless and could not save their son. On seeing the Villagers coming, A1 while running away, fell down in the nearby drainage and sustained injuries on the back of his head. Thereafter, A1 and other accused A2 fled from the scene of occurrence. P.W.1 sent P.W.2 to hospital with his another son namely, Samayapandi. P.W.1 went to the Police Station and lodged a compliant. On receipt of the said complaint, an F.I.R. was registered in Crime No.271 of 2016 for the offences under Sections 341, 294 (b), 323, 302 and 109 I.P.C. against the accused. In this case, apart from the parents of the deceased namely, P.W.1 and P.W.2, there are other eyewitnesses, who witnessed the occurrence. Recording their statements and by collecting documents and other



CRL MP(MD) No.8877 of 2023

materials, the Investigating Officer filed a charge sheet.

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4.2. Before the Trial Court, on the side of the prosecution, P.W.1 to P.W.25 were examined. Ex.P.1 to Ex.P.19 and materials objects [M.O.1 to M.O.5] were marked. The biological report and serological report were marked as Ex.C.1 and Ex.C.2. On the side of the accused, no witness was examined, nor any document was marked. On conclusion of the trial, the Trial Court convicted and sentenced the petitioner/A1 as stated above.

5. Mr. Gopalakrishna Lakshmana Raju, learned Senior Counsel for the petitioner submitted that the prosecution projected three motives. The first instance is the fight that arose between the deceased and A1, when they were taking bath in the stream; the second instance is the damage caused to the two wheeler of A1 by the deceased; and the third instance is about A1 entering into the house of P.W.1, causing damage to certain household articles. The learned Senior Counsel submitted that no material was produced to prove these motives.

5.1. The learned Senior Counsel further submitted that it is the deceased, who entered the house of the accused, attacked A1 and others, burnt household articles inside the house of A1, caused damage and also set fire. In the said melee, both A1 and the deceased sustained injuries, but the prosecution suppressed the same and shifted the scene of occurrence to the road and introduced some eyewitnesses as



CRL MP(MD) No.8877 of 2023

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though the accused had committed the offences. In this case, P.W.1 and P.W.2 are the parents of the deceased. The other witnesses namely, P.W.3 to P.W.5, neighbours have not supported the case of the prosecution. P.W.6 to P.W.9 and P.W.13 who were projected as eyewitnesses, are relatives and known persons to the deceased. The other witnesses are hearsay witnesses, who allegedly reached the scene of occurrence and hospital on hearing the incident, apart from the official witnesses.

5.2. The learned Senior Counsel further submitted that in this case, P.W.1 admits that he was not aware of the earlier disputes between the deceased and A1 and as follow up, A1 entering the house of the deceased, causing damage to the household articles. P.W.2 the mother of the deceased also admits that she was not aware of the previous incidents and fight between A1 and her son [deceased] as well as the damages caused. Thus, P.W.1 and P.W.2 have clearly stated that they were unaware of the earlier incidents, which were projected as motives for the said murder. Hence, the prosecution has not proved the motive. Likewise, the injury sustained by P.W.2 is also with contradictions. P.W.20 – Dr.Syed Abudhakir, the causality doctor, who treated P.W.2 states that there is no fracture or serious injury on P.W.2, except for her claim that she had some pain. Further, in the Accident Register [Ex.P.7], there is a correction of date, which is admitted by P.W.20. Thus, an earlier incident of hurt is projected as though P.W.2 was attacked by the accused at the time of murder, to



CRL MP(MD) No.8877 of 2023

project P.W.2 as an injured eyewitness.

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5.3. The learned Senior Counsel further submitted that P.W.1 and P.W.2, as well as the other witnesses have admitted that immediately after the occurrence, Senior Police Officers had reached the scene of occurrence immediately and there was an agitation. Photographs were taken from inside and outside of the house. After getting assurance from the Deputy Superintendent of Police only, the body was taken to the Hospital for postmortem. A2 being a former Panchayat President, was contemplating to contest in the forthcoming Panchayat Election and therefore, at the instance of his rivals, the entire family were falsely implicated in this case. The presence of Police and the Photographs have been suppressed. Further, P.W.9 and other witnesses admit the presence of Senior Police Officers, the bloodstains found inside the house of the accused and the burning articles. The damages caused and the bloodstains were not recorded in any Mahazar. The dead body was also recovered from inside the house. However, the occurrence place was shifted to the road and thereafter, P.W.1, P.W.2, P.W.6 to P.W.9 and P.W.13 were projected as eyewitnesses in this case.

5.4. The learned Senior Counsel further submitted that though in the complaint, as well as in the statements of the witnesses, it is stated that A1 sustained injuries on the back of his head and blood was oozing out, the prosecution failed to give any



CRL MP(MD) No.8877 of 2023

WEB COPY

explanation in this regard. Thus, the prosecution by suppressing the injuries sustained by A1, the damages caused to the house of the accused and the aggressive acts of the deceased and his friends, have foisted a false case against the accused. The learned Senior Counsel further submitted that since the petitioner was implicated in yet another murder case falsely, A1 had attempted to commit suicide, for which, a case has been registered against him. The Trial Court had not only failed to look into these aspects, but had glossed over the same and hence, the learned Senior Counsel prayed for suspension of sentence.

6. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor submitted that in this case, the earlier incidents of May, 2016 to October 2016, namely, with regard to the fight between A1 and the deceased, house trespass, damage to the household articles by A1 and damage to the two wheeler of A1 by the deceased are all recorded in Ex.P.1 complaint. Further, P.W.1, P.W.2 and other witnesses have clearly spoken about the motive. The presence of P.W.1 and P.W.2 in the scene of occurrence is quite natural. P.W.2 questioned A1 and his family members about the abusive language, constant fight and friction between A1 and the deceased. In fact, P.W.2 had pleaded with them to forget the past incidents. It is to be seen that both families of the accused and the deceased were living in the same area and were known to each other. While A2 to A4 caught hold of the deceased, A1 had inflicted



CRL MP(MD) No.8877 of 2023

WEB COPY

cut injuries by using sickle, which acts were clearly spoken by five other independent eyewitnesses, apart from P.W.1 and P.W.2. Since A4 in this case was a juvenile, the case against him was spilt up.

6.1. The learned Additional Public Prosecutor further submitted that in this case, the occurrence has been clearly spoken by the eyewitnesses, which is corroborated by the medical evidence. P.W.2, the mother of the deceased, who had also sustained injuries, had taken treatment in the Government Hospital, which was confirmed by P.W.20, who gave Ex.P.7 Accident Register. The demonstration by the public on the brutal murder of the deceased by the accused and the arrival of the Deputy Superintendent of Police in the scene of occurrence to pacify the agitators and the subsequent removal of the body for postmortem, are confirmed by the witnesses. P.W.1 father of the deceased sent P.W.2 for treatment and the body to the hospital, and thereafter, went to the Police Station and lodged the complaint. Hence, there was some delay in lodging the complaint. The presence of the Deputy Superintendent of Police in the scene of occurrence is not for the purpose of investigation, but, only to bring peace in the locality and to disperse the agitators. The photographs were taken only for the purpose of recording the agitation, which had nothing to do with the investigation in this case.

6.2. The learned Additional Public Prosecutor further submitted that the



CRL MP(MD) No.8877 of 2023

WEB COPY

contradictions elicited with the witnesses before the Juvenile Court is now interpreted in a wrong manner. The points raised now by the petitioner/A1 were already raised during the trial. The Trial Court, after considering the evidence and the materials, had rightly convicted the petitioner/A1. In this case, grant of bail to A2 and A3 would not enure to the benefit of the petitioner/A1, since A2 and A3 are said to have only caught hold of the deceased. It is the petitioner herein, who with deadly weapons had attacked the deceased causing fatal injuries, owing to which the deceased succumbed to the injuries in the scene of occurrence. Further, P.W.21 the postmortem doctor confirms the injuries with the case of the prosecution.

6.3. The learned Additional Public Prosecutor further submitted that after coming out on bail, the petitioner/A1 committed yet another murder and the case is pending trial. Apart from the two murder cases, A1 was also involved in other offences of serious nature. He further submitted that the judgment of the Trial Court is a well reasoned one and the petitioner can very well raise all these points during the final hearing and hence, he strongly opposed the grant of bail.

7. We have heard the submissions made by both sides and perused the materials available on record.

8. Considering the aforesaid submissions and on perusal of materials, it is seen that there are seven eyewitnesses to the occurrence, who are all described as known



CRL MP(MD) No.8877 of 2023

WEB COPY

persons and relatives of the deceased, cannot be a ground for granting suspension of sentence. In rural areas, it is a community living, where each one is known to each other and connected for one reason or the other. In this case, from May 2016, there have been regular fights between A1 and the deceased and finally, the deceased was done to death on 24.10.2016. Prior to this, there have been abuse, assault and damage to the properties. The motive has been clearly spelt out in the complaint, which gains credence. Further, witnesses have confirmed the same. The occurrence was witnessed by several persons, who had supported the case of the prosecution. P.W.2 is an injured eyewitness. The occurrence had taken place near the house of the accused. The medical evidence is also in conformity to the case of the prosecution. No prima facie case has been made out to discredit or doubt the judgment of the Trial Court, to grant suspension of sentence.

9. In view of the above, this Court is not inclined to entertain the Criminal Miscellaneous Petition and the same is liable to be dismissed. Accordingly, it is dismissed.

sd/-
25/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



CRL MP(MD) No.8877 of 2023

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TO

1 THE ADDITIONAL DISTRICT JUDGE (FTC), THENI.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
GUDALUR NORTH POLICE STATION, THENI DISTRICT.

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

ORDER IN
CRL MP(MD) No.8877 of 2023
IN CRL A(MD) No.432 of 2022
Date :25/08/2023

SA/DD/SAR. /28.08.2023/12P/5C

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