



CRL MP(MD) No.10772 & 10773, 11162 and 11157 of 2023

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

Monday, the Fourth day of September 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.10772 & 10773, 11162 and 11157 of 2023
IN
CRL A (MD)NOS. 615, 652 AND 651 of 2023

RAMARAJ	... PETITIONER/ APPELLANT in CRL MP(MD). 10772/ 2023
RAMACHANDRAN	... PETITIONER/ APPELLANT IN CRL MP(MD). 10773/ 2023
MUTHURAMAN	... APPELLANT/ ACCUSED NO.3 IN CRL MP(MD). 11162/ 2023
RAJENDRAN	... APPELLANT/ ACCUSED NO.4 IN CRL MP(MD). 11157/ 2023

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
MALLANGINARU POLICE STATION,
VIRUDHUNAGAR
DISTRICT.
(CRIME NO.256 OF 2013)
RESPONDENT/COMPLAINANT

...

IN ALL THE PETITIONS

Prayer in CRL MP(MD). 10772/ 2023 IN CRL A(MD)No. 615 OF 2023:

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



CRL MP(MD) No.10772 & 10773, 11162 and 11157 of 2023

To suspend the operation and execution of sentence imposed by the Additional District and Sessions Judge, Virudhunagar in S.C.No.77 of 2015 dated 12.07.2023 till the disposal of appeal and may be pleased to enlarge the above petitioner / appellant on bail till the disposal of pending appeal.

Prayer in CRL MP(MD). 10773/ 2023 IN CRL A(MD)No. 615 OF 2023:

To suspend the operation and execution of sentence imposed by the Additional District and Sessions Judge, Virudhunagar in S.C.No.77 of 2015 dated 12.07.2023 till the disposal of appeal and may be pleased to enlarge the above petitioner / appellant on bail till the disposal of pending appeal.

PRAYER IN CRL A(MD)No. 615 OF 2023 :

Pleased to call for records relating to the impugned judgment of conviction passed by the Learned Additional District and Sessions Judge, virudhunagar in S.C.No. 77 of 2015 dated 12.07.2023 and set aside the same and to acquit the Appellants/ Accused Nos. 1 & 2 from the charges framed against them.

Prayer in CRL MP(MD). 11162/ 2023 IN CRL A(MD)No. 652 OF 2023:

To Suspend the Sentence passed in SC.No.77 of 2015 dated 12.07.2023 on the file of Additional District and Sessions Judge, Virudhunagar and enlarge the Petitioner/ Accused No.3 on bail pending disposal of the above Appeal.

PRAYER IN CRL A(MD)No. 652 OF 2023:

Pleased to call for records relating to the impugned judgment of conviction passed by the Learned Additional District and Sessions Judge, virudhunagar in S.C.No. 77 of 2015 dated 12.07.2023 and set aside the same and to acquit the Appellants/ Accused No.3 from the charges framed against her.

Prayer in CRL MP(MD). 11157/ 2023 IN CRL A(MD)No. 651 OF 2023 :

To suspend the sentence imposed by the Additional District and Sessions Judge, Virudhunagar S.C.No.77/2015 dated 12.07.2023 till the disposal of Criminal Appeal and may be pleased to enlarge the above petitioner/ appellant on bail till the disposal of pending appeal.

PRAYER IN CRL A(MD)No. 651 OF 2023:

Pleased to call for the records of the Judgment dated 12.07.2023 in S.C.No. 77 of 2015 on the file of the Judgemnt dated 12.07.2023 in S.C.No. 77 of 2015 on the file of the Additional District and Sessions Judge, Virudhunagar District in Crime No.256



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of 2013 on the file of the Respondent Police and set aside the same and Acquit the appellant/accused No.4.

Order : These Criminal Miscellaneous Petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of MR. MARIAPPAN.G, Advocate for the petitioner in CRL MP(MD) Nos. 10772 & 10773 of 2023 and of MR.N.MOHIDEEN BASHA, Advocate for the Petitioner in CRL MP(MD)No. 11162 OF 2023 and of MR.S.RAJASEKAR, Advocate for M/S.LAJAPATHI ROY ASSOCIATES, for the petitioner in CRL MP(MD)No. 11157 OF 2023 and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent in all the petitions, the court made the following order:-

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

These Criminal Miscellaneous Petitions have been filed seeking to suspend the sentence imposed on the petitioners/A1 to A4, by judgment dated 12.07.2023, passed in S.C.No.77 of 2015, on the file of the learned Additional District and Sessions Judge, Virudhunagar, and to enlarge the petitioners/A1 to A4 on bail pending disposal of the above appeals.

2.The petitioners are Accused Nos.1 to 4 in S.C.No.77 of 2015 before the learned Additional District and Sessions Judge, Virudhunagar, and vide judgment dated 12.07.2023, they were convicted and sentenced as under:-



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Rank	Conviction under Section	Sentence	Fine amount
A1 and A2	u/s.341 I.P.C.	-	To pay a fine of Rs.500/- each, in default, to undergo one week simple imprisonment
	324 I.P.C.	To undergo six months simple imprisonment	-
A3 and A4	u/s.341 I.P.C.	-	To pay a fine of Rs.500/- each, in default, to undergo one week simple imprisonment
	u/s.302 r/w.341 I.P.C.	To undergo life imprisonment	To pay a fine of Rs.5,000/- each, in default, to undergo one year rigorous imprisonment

Originally, in this case, five persons were tried by the Trial Court. A5 was acquitted from all the charges. Challenging the aforesaid conviction and sentence, the petitioners/A1 to A4 filed CrI.A.(MD)Nos.615, 652 and 651 of 2023 along with the instant Criminal Miscellaneous Petitions, seeking suspension of sentence and bail, which are detailed as under:-

Rank	CrI.M.P.(MD)No.	CrI.A.(MD)No.
A1 (Ramraj)	CrI.M.P.(MD)No.10772 / 2023	CrI.A.(MD)No.615 / 2023
A2 (Ramachandran)	CrI.M.P.(MD)No.10773 / 2023	CrI.A.(MD)No.615 / 2023
A3 (Muthuraman)	CrI.M.P.(MD)No.11162 / 2023	CrI.A.(MD)No.652 / 2023
A4 (Rajendran)	CrI.M.P.(MD)No.11157 / 2023	CrI.A.(MD)No.651 / 2023



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3. The case of the prosecution is that, on 10.10.2013 at about 08.45 a.m., in front of P.W.1's house, A1 and A2 abused P.W.1 with filthy language, waylaid him, attempted to commit murder of P.W.1 and caused injuries. P.W.1's son Ganesamoorthy on coming to know about the injuries sustained by his father, took him to the Government Hospital, Virudhunagar in his two wheeler [M.O.10] at about 09.00 a.m. At that time, near the house of P.W.22, A3 to A5, waylaid Ganesamoorthy, A3 attacked him with wooden log on his forehead. Both P.W.1 and Ganesamoorthy fell down and then, A4 attacked Ganesamoorthy with wooden log on the back of his head, due to which, Ganesamoorthy fell unconscious. Thereafter, A4 and A5 took Ganesamoorthy in motorcycle [M.O.11] to Government Hospital, Virudhunagar, where P.W.16, causality doctor, examined Ganesamoorthy. Finding his health condition deteriorating, P.W.16 referred him to Government Rajaji Hospital, Madurai. In the meanwhile, P.W.1 came to the Hospital with his another son for treatment. From the Hospital, information was sent to the respondent Police, who registered the case. On the way to the hospital, P.W.1's son Ganesamoorthy succumbed to the injuries. P.W.17 Dr.Muruguporselvi confirmed the same. P.W.24 Investigating Officer, visited the scene of occurrence, prepared Observation Mahazar (Ex.P.22) and Rough Sketches (Exs.P.23 and P.24), enquired the witnesses present in the scene of occurrence as well as P.W.1, who was in the



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Hospital, recorded their statements. All the accused were arrested. On their confession, the weapons and other articles were seized in the presence of P.W.11. After collecting the medical records, examining the witnesses, charge sheet filed before the Trial Court against all the accused.

3.1. In this case, A1 and A2 are brothers, A3 and A4 are the sons of A1. A5 is the son of A2. P.W.1 is the junior father of A1 and A2. The deceased is the son of P.W.1.

3.2. During trial, on the side of the prosecution, P.W.1 to P.W.25 examined, Ex.P.1 to Ex.P.31 marked and materials objects M.O.1 to M.O.11 produced. On the side of the accused, no witness examined and Ex.D.1 and Ex.D.2 marked. On conclusion of trial, the Trial Court convicted and sentenced the petitioners/A1 to A4 as stated above.

4. The contention of the learned counsel for the petitioners/A1 and A2 is that, in this case, for the assault on P.W.1, the prosecution relied upon the evidence of P.W.1, P.W.2, P.W.5 and P.W.23. P.W.23 not supported the case of prosecution. P.W.1 and P.W.2 are the husband and wife. P.W.5 is the close relative of P.W.1 and P.W.2. The Trial Court found A1 and A2 guilty for the offences under Sections 341 and 324 I.P.C. and directed to pay fine of Rs.500/- each for the offence under Section 341 I.P.C. and sentenced to six months simple imprisonment for the offence under



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Section 324 I.P.C. For the other offences, they were acquitted. The Trial Court, by order dated 12.07.2023, suspended the sentence of A1 and A2 under Section 389(1) Cr.P.C. in C.M.P.No.297 of 2023 for a period of 60 days.

4.1. The learned counsel further submitted that, in this case, the prosecution withheld the true facts. In fact, it was P.W.1, who had assaulted A1 with iron rod. In this regard, A1 lodged a complaint, based on which, a case in Crime No.257 of 2013 registered against P.W.1. In support of the said contention, the learned counsel drew the attention of this Court to Ex.D.1, complaint lodged by A1 and the Accident Register of A1 (Ex.D.2). From the Accident Register (Ex.D.2), it is seen that A1 sustained lacerated injuries on his head and there was contusion on his face and also injuries on his shoulder. There is no explanation given by the Investigating Officer in this regard. The prosecution attempted to give explanation as though when A1 attempted to flee from the scene of occurrence, fell down and sustained injuries, which may not be true considering the nature of injuries sustained by A1. P.W.16 Doctor, who gave Accident Register to A1, confirmed the injuries sustained by A1 and A1 was very much present in the Hospital when P.W.1 was taking treatment. It is also to be seen that P.W.1 had left the hospital without any intimation. Hence, the wound certificate in this case, could not be given.

4.2. The learned counsel further submitted that as regards A2, it is projected as



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though A2 attempted to hit P.W.1 on his head, which was resisted by P.W.1 and therefore, P.W.1 sustained injury on his left hand small finger. Thereafter, it is projected as though A1 and A2 fled from the scene of occurrence, the witnesses admitted that A1 and A2 as well as P.W.1 were owning lands adjacent to each other. A drought relief of Rs.35,000/- was granted by the Government in the year 2013. P.W.1 collected the drought relief amount of the entire family for himself without sharing with A1 and A2, for which, there was a dispute. Added to it, the learned counsel submitted that P.W.1 encroached the lands of A1 and A2 and was cultivating the same, which was objected by A1 and A2. It was P.W.1, who was the aggressor, initially assaulted A1, which leads to a commotion and attack by each other. The Trial Court, on this score, finding that the offence under Section 307 I.P.C. is not made out and sentenced the petitioners/A1 and A2 as stated above.

4.3. The learned counsel further submitted that during trial, the petitioners/A1 and A2 were on bail and the Trial Court suspended the sentence imposed on the petitioners/A1 and A2 and hence, he prayed that that the substantive sentence imposed against the petitioners/A1 and A2 may be suspended.

5. The learned Senior Counsel for A4 submitted that, in this case, the second occurrence admittedly is said to have taken place 300 meters away from the place of first occurrence. For the second occurrence, the witnesses projected are P.W.1,



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P.W.3, P.W.4 and P.W.22. P.W.22 not supported the case of prosecution. P.W.1 is the father of the deceased. P.W.3 is none other than the brother's daughter of P.W.1. P.W.4 is close relative of P.W.2, wife of P.W.1. P.W.3 and P.W.4 are projected as though they were chance witnesses, who happened to be in the scene of occurrence. Their evidence is that, when A3 to A5 came in a two wheeler, P.W.1 and his son [deceased Ganesamoorthy] were travelling in the opposite direction in a two wheeler. At that time, they were stopped and the deceased was assaulted by A3 on his forehead and A4 on the backside of his head with wooden logs [M.O.3 and M.O.4]. Further, A5 is said to have kicked the deceased on his private part. Their further evidence is that, A4 and A5 thereafter took the deceased in their two wheeler to the hospital for treatment.

5.1. The learned Senior Counsel further submitted that P.W.1's evidence is that, A4 and A5 took his son to the Hospital for treatment. If the real intention of A4 and A5 is to do away the life of the deceased, they would not have taken the deceased to the Hospital for treatment. From the admitted case of the prosecution itself, it is seen that, after the assault of A3 and A4, the deceased was thereafter taken by both to the Hospital for treatment and they never intended to do away the life of the deceased. The Trial Court failed to consider these facts. Further, the presence of P.W.2 and P.W.4 in the scene of occurrence are highly doubtful and they gave



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contradictory versions. P.W.1's evidence is that, after the assault by A3 and A4, they left M.O.3 and M.O.4 in the scene of occurrence. The prosecution, on the other hand, projects P.W.11 Village Administrative Officer, in whose presence A1 to A4, said to have been arrested and on their confession, A3 is said to have produced M.O.3 and M.O.4 from his house. Further, A4 is said to have produced a Lungi with bloodstains and the grouping of the same could not be identified. It is the further case that A3 and A4 taken the deceased to the Hospital for treatment. In such circumstances, the presence of bloodstains may not have of any significance. The recovery is highly doubtful in view of the contra evidence of P.W.1 and P.W.11. In this case, the prosecution have not come with clean hands, suppressed the aggressiveness of P.W.1, who attacked A1 with iron rod on his head.

5.2. The learned Senior Counsel further submitted that admittedly A3 to A5 not present when their father was attacked by P.W.1. On coming to know about the same, to rescue their father, they came in a two wheeler. At that time, they saw P.W.1 and his son proceeding in the opposite direction and there was commotion, fight and exchange of words and the alleged occurrence is said to have taken place. The learned Senior Counsel further submitted that from the prosecution case, it is seen that A4 has no intention to commit murder. The witnesses projected by the prosecution are closely related witnesses, who are got up witnesses, which is proved



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by their contradictions. The learned Senior Counsel for A4 submitted that A4 is said to have attacked the deceased on the back of his head when he fell down, which is highly improbable.

5.3. The learned Senior Counsel further submitted that P.W.1 received drought relief fund for the properties of A1 and A2, not shared with them and there was bickering on this issue. Added to it, the learned Senior Counsel submitted that P.W.1 encroached the lands of A1 and A2. Hence, P.W.1, is the aggressor in this case. The respondent Police failed to conduct proper investigation on the complaint of A1 and thereafter, closed the case as "mistake of fact". Thereafter, private complaint has been lodged by A1 against P.W.1, which later ended in acquittal, against which, an appeal is yet to be preferred. Thus, looking the case from any angle, it is seen that the conviction imposed on A4 for the offence under Section 302 I.P.C. is not sustainable.

6. The learned counsel for A3 adopting the arguments advanced by the learned Senior Counsel for A4, submitted that in this case, A3 is said to have attacked the deceased on his forehead. Going by the prosecution case, it is clear that the deceased fell down from the motorcycle on the ground and thereafter, A4 is said to have attacked him. The medical evidence is contrary to the ocular evidence.

Though the prosecution projected its case as A3 ran away from the scene of



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occurrence, the evidence of the witnesses admit that A3 was very much present in the Hospital. In fact, P.W.3 one of the witnesses states that A3 along with A4 had taken the deceased to the hospital for treatment. Further, P.W.3 states that the wooden logs [M.O.3 and M.O.4] were identified in a bush by one Tailor lady and P.W.3 had taken it and kept with her and later handed over to the Police. P.W.4's evidence is that, he had seen the second occurrence from a distance of 40 feet. Hence, he cannot be a eyewitnesses for the occurrence. There have been several anomalies in this case, which the Trial Court failed to properly appreciate and hence, he prayed for suspension of sentence.

7. Per contra, the learned Additional Public Prosecutor submitted that in this case, A1 attacked P.W.1 with iron rod, due to which, P.W.1 sustained injuries. P.W.2 was present at the time of attack. On hearing the cry of P.W.1 and P.W.2, their son Ganesamoorthy came in rescue of his father. On seeing him, A1 and A2 fled from the scene of occurrence. Ganesamoorthy took his father P.W.1 in his two wheeler to the hospital for treatment. At that time, A3 and A4, who came in the opposite direction, intercepted, attacked Ganesamoorthy with wooden logs and bill hook, who finally succumbed to the injuries. In this case, A1 attempted to project as though it was P.W.1 is the aggressor and filed a case, which was closed as "mistake of fact" and thereafter, filed a private complaint. Both the cases were tried together



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and the case of A1 was dismissed. Both the injured namely, P.W.1 and the deceased were immediately taken to the hospital. P.W.16 is the doctor, who had examined both, referred the deceased to the Government Rajaji Hospital, Madurai. On the way to the hospital, the deceased succumbed to the injuries. Thereafter, the respondent Police registered the case against the accused, conducted investigation, collected materials, recorded the statement of the witnesses and P.W.16 causality doctor confirms the injuries and proximate time, which is in conformity with the prosecution case. In this case, for the first occurrence, the eyewitnesses are P.W.2 and P.W.5 and for the second occurrence, the eyewitnesses are P.W.3 to P.W.5, who are related not only to P.W.1, but also related to the accused herein. Hence, their credibility cannot be doubted. There are some discrepancies with regard to recovery of M.O.3 and M.O.4, which have been raised even during the trial and the Trial Court had considered and rejected same. The other grounds now raised by the petitioners/A1 to A4 have already been raised during the trial, and the same have been considered and rejected. In this case, the witnesses have clearly spoken about the presence of the accused and overt act.

7.1. The learned Additional Public Prosecutor further submitted that by marking Exs.D.1 and D.2, the defence had clearly admitted the presence of the accused in the scene of occurrence. The dispute is with regard to sharing of drought



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relief fund. In this case, the motive and attack by the accused are not disputed. It is only whether it was with an intention to do away the life of the deceased, the accused committed the offence or not has to be decided only at the time of final hearing of the case. He further submitted that the judgment is of recent one and therefore, he strongly opposed the grant of bail.

8. We have heard learned Counsels appearing for the parties and perused the materials on record.

9. Considering the aforesaid facts and circumstances of the case and also considering the submissions made by the learned counsel on either side, it is seen that in this case, admittedly, A1 was assaulted by P.W.1, which fact has been withheld. The complaint lodged by A1 and the A.R. copy of A1 have been marked as Exs.D.1 and D.2. Though an attempt has been made by giving explanation that A1 sustained injury while flee from the scene of occurrence, the injury recorded in Ex.D.1 is contrary to the explanation given. Further, in this case, the recovery of M.O.3 and M.O.4 are highly doubtful. P.W.1 states that M.O.3 and M.O.4 were left in the scene of occurrence. P.W.3 states that she collected M.O.3 and M.O.4 and handed over to the Police. On the other hand, the prosecution has projected P.W.11 Village Administrative Officer as a witness for arrest of A2 to A4 and recovery, but, the presence of A1 and A3 to A5 in the hospital is not disputed. Moreover, the



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appeals are not likely to be taken up in the near future and that there are arguable points in favour of the petitioners herein, the petitioners are entitled for the relief of suspension of sentence.

10. Accordingly, this Criminal Miscellaneous Petitions stand allowed and the sentence of imprisonment is suspended and bail is granted to the petitioners on the following conditions:-

- (i) The petitioners shall execute a bond for a sum of Rs.10,000/- each, 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 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 appeals and if they are not able to appear before the Trial Court on any 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.

sd/-
04/09/2023

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05/09 /2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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- 1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VIRUDHUNAGAR DISTRICT.
- 2 THE INSPECTOR OF POLICE
MALLANGINARU POLICE STATION,VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT,CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.MOHIDEEN BASHA, Advocate(SR-13257[I] ,13267 (I)dated
05/09/2023)

+1 CC to M/s.S.RAJASEKAR , Advocate, SR.13215(I) dated 05/09/2023

+1 CC to M/s. G.MARIAPPAN , Advocate SR.No.13256(I) dated 05/09/2023

ORDER

IN

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IN

CRL A (MD)NOS. 615, 652 AND 651 of 2023

Date :04/09/2023

PKP/SAR- /05.09.2023/ 16P/9C

Madurai Bench of Madras High Court is issuing certified
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