



Crl.M.P.(MD)No.13491 of 2023

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

Monday, the Twenty Fifth 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.M.P.(MD)No.13491 of 2023
in
Crl.A.(MD)No.868 of 2023

PATTU @ ALAGUPATTU

... APPELLANT/ ACCUSED NO.2

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.616/2014

... 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 passed in SC.No.155 of 2015 on the file of the Learned Fast Track Mahila Court, Virudhunagar at Srivilliputtur and enlarge the Petitioner/ Accused No.2 on bail pending disposal of the above Appeal.

Prayer in Crl.A.(MD)No.868 of 2023:

To call for records relating to the impugned judgment of conviction in SC No.155 of 2015 on the file of the Learned Fast Track Mahila Court Virudhunagar at Srivilliputhur, and set aside the same and to acquit the Appellant/ Accused No.2 from the Charges framed against her and thus to render justice.



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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 MR.MOHIDEEN BASHA.N, Advocate for the petitioner and of MR.RMS. SSETHURAMAN, 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 23.03.2023, passed in S.C.No.155 of 2015, on the file of the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, and to release the petitioner on bail pending disposal of the above appeal.

2. The petitioner is A2 in S.C.No.155 of 2015 before the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, and vide judgment dated 23.03.2023, he was convicted and sentenced as under:-

Conviction under Section	Sentence
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 six months.



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Section 506(ii) I.P.C.

To undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months.

Both the sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentences, the petitioner filed Crl.A.(MD)No.868 of 2023. Pending the appeal, the petitioner has also filed the instant Criminal Miscellaneous Petition seeking suspension of sentence and bail.

3. The case of the prosecution is that A1 to A4 are friends. The deceased Ramani is a money lender. A1 had borrowed a sum of Rs.80,000/-, A2 had borrowed a sum of Rs.1,10,000/- and A3 had borrowed a sum of Rs.50,000/- from the deceased. Since there was some default in repayment of the amounts, the deceased along with his brother viz., P.W.1, had gone to the house of A1 and taken away the belongings of A1. Like wise, they had gone to the shop of A2 and taken away the machineries from his shop. Enraged by the same, A1 to A3 with the help of their friend A4, had decided to do away the deceased. Hence, on 07.10.2014 at about 01.00 p.m., A1 called the deceased Ramani near the shop of A2. Hoping to receive the loan amount, the deceased came along with P.W.1 and P.W.2 and they were waiting near the shop of



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A2. At that time, A3 and A4 restrained the deceased and A1 and A2 stabbed her continuously with the knives on the face, chest and all over the body. The deceased died on the spot and P.W.1 and P.W.2 took the deceased to the hospital, where the death was confirmed. After the death of the deceased, P.W.1 lodged a complaint [Ex.P.1] to P.W.23, who registered the F.I.R. and thereafter, P.W.24, took up investigation in this case and filed the charge sheet.

4. Before the Trial Court, on the side of the prosecution, P.W.1 to P.W.24 were examined, Ex.P.1 to Ex.P.24 and materials objects [M.O.1 to M.O.12] were marked. On the side of the accused, no witness was examined, nor any document was marked. A1 and A4 died during the trial and hence, the charges against them got abated. On conclusion of the trial, the Trial Court convicted and sentenced the petitioner/A2 as stated above.

5. The contention of the learned counsel for the petitioner is that the petitioner had been convicted for the offences under Section 302 and 506(ii) I.P.C. He further submitted that in this case though the prosecution had projected independent eyewitnesses, none of them had supported the case of the prosecution except P.W.1 and P.W.2, who are brother and son-in-law of the deceased Ramani, respectively.

P.W.3, who is the son of the deceased, came later to the scene of occurrence. P.W.4,



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who is the friend of the deceased, though projected as eyewitness to be present along with P.W.1 and P.W.2 in the scene of occurrence, did not support the case of the prosecution. P.W.6, P.W.7, P.W.10, P.W.11, P.W.12 and P.W.13 not supported the case of prosecution. In this case, the evidence of P.W.1 and P.W.2 are highly doubtful and contradictory to each other. The Trial Court placed too much reliance on the evidence of P.W.1, brother of the deceased, whose presence in the scene of occurrence is highly doubtful, further giving a finding that his evidence is corroborated by the evidence of P.W.2, P.W.3 and P.W.4, is factually incorrect. P.W.1 admits that he is the aggressor, who earlier gone to the house of A1 along with P.W.2, P.W.4 and the deceased, forcibly taken away household articles by using their musclemen and gone to the lathe shop of A2 and taken away machineries and articles. As regards the overt act attributed against A2, the version of P.W.1 and P.W.2 are highly contradictory to each other. The ocular evidence of P.W.1 is contrary to the medical evidence as could be seen from the evidence of P.W.18 postmortem doctor and Ex.P.11. As regards this petitioner is concerned, he was taken into police custody and thereafter, he is said to have given confession in the presence of P.W.9 V.A.O. Based on the said confession, M.O.2 knife and M.O.9 shirt of the petitioner are said to have been seized and recovered. P.W.9 Village Administrative Officer admits that the confession was recorded by the Head Constable in the Police Station, and he signed



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the same in the Police Station. He further states that M.O.2 and M.O.9 were available in the Police Station in a plastic cover and labelled. Thus, the recovery of M.O.2 and M.O.9 are highly doubtful. As could be seen from the records that in this case the evidence of P.W.1 is contradictory to the medical evidence and also the other eyewitness P.W.2.

6. The learned counsel for the petitioner further submitted that in this case, P.W.1, P.W.2 and P.W.4 were projected as eyewitnesses. P.W.1 is the brother of the deceased, P.W.2 is the son-in-law of the deceased and P.W.4 is the friend of the deceased. P.W.4 not supported the case of the prosecution. The presence of P.W.2 and P.W.4 in the scene of occurrence is highly doubtful, since P.W.4, in her evidence, states that after getting information, along with P.W.2 rushed to the scene of occurrence. Hence, the presence of P.W.2 and P.W.4 in the scene of occurrence highly doubtful. Further, P.W.1 in his evidence had stated that on the date of occurrence, he along with the deceased, P.W.2 and P.W.4 had gone to the workshop of A2 and at that time, the occurrence is said to have taken place. The evidence of all the eye witnesses are highly contradictory and doubtful and hence, he prayed for suspension of sentence.



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7. Per contra, the learned Additional Public Prosecutor submitted that in this case four accused persons were involved. A1 to A3 had borrowed money from the deceased. Since there was some default in repayment of the amount, the deceased had used some force in collecting the money. Enraged by the same, A1 to A3 along with their friend A4 had planned to murder the deceased. Hence, on 07.10.2014 at about 1.00 p.m., A1 called the deceased Ramani to the shop of A2. Hoping to receive the loan amount, the deceased came and at that time, A3 and A4 restrained the deceased and A1 and A2 stabbed her continuously with the knives. The deceased died on the spot and P.W.1 and P.W.2 took the deceased to the hospital, where the death was confirmed. After the death of the deceased, P.W.1 lodged a complaint [Ex.P1] to P.W.23, who registered the F.I.R. and thereafter, P.W.24, took up the investigation in this case and prepared the observation mahazar, rough sketch and collected the articles found in the scene of occurrence in the presence of eyewitnesses. Thereafter, recorded the statement of the eyewitnesses, conducted inquest and sent the body for postmortem. On the basis of the confession given by the accused, the knives and other articles have been seized. On completion of investigation, charge sheet has been filed before the Trial Court. The Trial Court, on analysing the evidence in proper perspective, rightly convicted the petitioner/A2. The learned Additional Public Prosecutor further submits that the judgment is of recent origin,



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counter affidavit is yet to be filed in this case and he strongly opposed the grant of bail.

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

9. Considering the aforesaid submissions and on a perusal of the records, it is seen that the Trial Court had convicted the petitioner primarily on the evidence of P.W.1 on the ground that the evidence of P.W.1 is corroborated with the evidence of P.W.2, P.W.3 and P.W.4. In this case, admittedly, P.W.3 is not an eyewitness and P.W.4 did not support the case of the prosecution. The evidence of P.W.1 and P.W.2 are contradictory to each other. The ocular evidence of P.W.1 is contrary to the medical evidence as could be seen from the evidence of P.W.18 postmortem doctor and Ex.P.11. The fatal injury has been attributed to A1, who has been done away in another incident, in which, P.W.1 and P.W.2 are accused. In this case, from the evidence of P.W.9 Village Administrative Officer, it is seen that the confession and recovery are highly doubtful. That apart, the material witnesses namely, P.W.6, P.W.10, P.W.11, P.W.12 and P.W.13 did not support the case of the prosecution. Further, in this case, one Nagaraj/ A3 was granted bail by this Court in Crl.M.P.(MD) No.9565 of 2023 in Crl.A.(MD)No.429 of 2023, dated 30.08.2023.



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10. In view of the above, this Court is inclined to grant the relief of suspension of sentence. 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:-

- (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 Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputtur; and
- (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/-
25/09/2023

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27/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

1.THE JUDGE, FAST TRACK MAHILA COURT,
VIRUDHUNAGAR AT SRIVILLIPUTTUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3.THE INSPECTOR OF POLICE
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.

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

+1 cc to MR.N.MOHIDEEN BASHA, Advocate SR-14342

ORDER IN
Crl.M.P.(MD)No.13491 of 2023
in Crl.A.(MD)No.868 of 2023
Date :25/09/2023

RK (27/09/2023) 10P /6C

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