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Crl.M.P.No.2619 of 2024 in Crl.A.No.180 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.2619 of 2024
in Crl.A.No.180 of 2024

Jiguna @ Santhosh @ Santhoshkumar,
S/o.Lakshmanan

... Petitioner

Vs.

State represented by
The Inspector of Police,
Annadhanapatty Police Station,
Crime No.126 of 2015,
Salem District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence and conviction imposed against the petitioner/Appellant by judgment dated on 21.03.2019 in S.C.No.5 of 2016 passed by the learned I Additional District Judge, Salem and enlarge the petitioner on bail till the disposal of the above Criminal Appeal.

For Petitioner	:	Mr.R.Naresh Kumar
For Respondent	:	Mr.S.Raja Kumar Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned I Additional District Judge, Salem (Trial Court) *vide* judgment, dated 21.03.2019 in S.C.No.5 of 2016.

2.The petitioner was convicted for offence under Section 304(ii) of IPC



and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

3.The learned counsel for the petitioner submitted that the defacto complainant/PW1 lodged a complaint against the petitioner with delay of three days. She admits that on 29.03.2015, her son was brought by PW6 at about 02.30 p.m in a semi concious state. At about 06.30 p.m., when the defacto complainant attempted to wake her son, he failed to respond. She immediately called the neighbours and 108 ambulance. The ambulance attendant came there and found her son dead. Since there was Mariyamman Kovil Temple function in the village, the villagers objected for the body to be kept in the village. The defacto complainant informed the same to her sister/PW3, residing in Magudanchavadi village and the body taken there. On the next day, the defacto complainant's son body was buried. Three days thereafter on 02.04.2015, there was rituals in connection with the death of PW1's son. At that time, PW4 cousin brother of PW1 informed that while the body was laid in the pit, he found injuries on the head and blood oozing from the mouth of the deceased. After some deliberation, PW1 approached the respondent Police and lodged a complaint (Ex.P1) and body exhumated. In presence of Tahsildar, postmortem conducted by the Doctor/PW12 and postmortem report



(Ex.P5) confirms that fracture found in the skull and the death was due to the injuries found on the head. Hence, the case was altered. In the meanwhile, it is projected as though PW6 was enquired by PW1 who informed that the petitioner assaulted the deceased during a wordy quarrel.

4.He further submitted that PW6 and PW8 are the witnesses to speak about alleged attack of the petitioner using iron pipe (MO1). Though these two witnesses knew about the attack on 29.03.2015 itself, they had not informed the Police immediately and their statements recorded after postmortem. The evidence of these two witnesses are doubtful. The other circumstances projected against the petitioner is that the petitioner is said to have appeared before PW14/VAO, Dadagapatty Town and gave extra judicial confession (Ex.P10). PW14 recorded Ex.P10 and produced the petitioner before the Inspector of Police/PW15 along with the report (Ex.P11). The Inspector of Police further examined the petitioner and recorded confession statement (Ex.P12), pursuant to which, recovery of MO1 and MO2 made. PW14 is the Village Administrative Officer of a different village. Five days after the occurrence, the petitioner is said to have appeared before him. PW14 is a total stranger and there is nothing to show the petitioner gained confidence to give confession. The Postmortem Doctor/PW12 confirmed that there was



fracture on the head. Thus, the trial Court placing reliance on the evidence of PW1, PW6, PW8 & PW14, had convicted the petitioner, which is not proper. Their evidence are contradictory and belatedly recorded. Hence, the conviction under Section 304(ii) IPC is not sustainable against the petitioner.

5. The learned Additional Public Prosecutor appearing for the respondent Police submitted that based on the complaint (Ex.P1) of the defacto complainant/PW1, a case in Crime No.126 of 2015 registered under Section 174(3) Cr.P.C., on 02.04.2015 at about 21.00 hrs by the Inspector of Police and he took up the case for further investigation. The deceased body was exhumated and inquest conducted by the Revenue Divisional Officer. After inquest, PW12 conducted postmortem on the body of the deceased at the burial ground itself and gave postmortem report (Ex.P5). The postmortem report reveals there are injuries and fracture on the head. On 04.04.2015, the petitioner voluntarily surrendered before the Village Administrative Officer, Dadapatty village and gave confession. Thereafter the petitioner was handed over to the respondent Police and gave confession statement from, recovery made and petitioner produced before the learned Magistrate. The Inspector of Police altered the Section to 302 IPC. After completion of detailed investigation, on 15.10.2015 the Inspector of Police filed charge sheet. The



learned I Additional District Judge, Salem assigned S.C.No.5 of 2016. During trial, on the side of the prosecution, fifteen witnesses examined as PW1 to PW15 and nineteen documents marked as Exs.P1 to P19 and marked five material objects as MO1 to MO5. On the side of the defence, no witness examined and no document marked. After conclusion of trial, the trial Court convicted the petitioner as stated above. Hence, prays for dismissed of this petition.

6.Considering the submissions and on perusal of the materials, it is seen that the trial Court placed reliance on the evidence of PW1, PW6, PW8 & PW14 in convicting the petitioner. PW1 is the mother of the deceased. Though she stated that PW6 informed about the petitioner hitting her son with iron pipe (MO1) while he brought his son home on 29.03.2015, PW1 not stated about the same to anyone till 02.04.2015. The injuries on the head and the blood oozing out cannot be missed out since the body of the deceased was shifted from Annathanapatty village to Magudanchavady village due Mariyamman Kovil festival and on the objections made by the villagers. PW2 and PW3, the father and sister of PW1 not stated anything about injury and doubt in the death of the deceased. PW4 Cousin Brother of PW1, who said to have brought down the body to the pit, does not state anything about the



injuries on 29.03.2015. Only three days thereafter on 02.04.2015 after rituals, the injuries and the blood oozed out from the mouth disclosed. Thereafter, the complaint (Ex.P1) lodged. Added to it, in this case, PW6 and PW7 who were present at the time of petitioner attacking the deceased by using iron pipe (MO1) not stated anything till they were enquired by the Police belatedly and their statements also reached the Court with delay. The evidence of Doctor/PW12 is that the fracture found on the forehead but that alone will not be sufficient to convict the petitioner for offence under Section 304(ii) IPC. Hence, the conviction of the petitioner to be reconsidered. It will take sometime to take up the appeal for final hearing.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8. Further, the petitioner shall appear before the Trial Court at 10.30 a.m., on the first working day of every English Calendar month until the disposal of the criminal appeal and if he is not able to appear before the Trial Court on that



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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 on the same month in lieu of the date of his absence as directed by the Trial Court.

9. Accordingly, this Miscellaneous Petition is ordered.

28.03.2024

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M.NIRMAL KUMAR, J.

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To

1. The I Additional District Judge,
Salem.
2. The Inspector of Police,
Annadhanapatty Police Station,
Salem District.
3. The Central Prison,
Salem.



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4.The Public Prosecutor,
High Court, Madras.

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