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Crl.MP.No.2220/2024 in Crl.A.No.168/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2024

PRONOUNCED ON: 25.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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1. Chinnapaiyan @ Chinnavan @ Suriya
2. Raja @ Pachiyaiyappan .. Petitioners/A1 & A2

Versus

State rep.by
The Inspector of Police
Taluk Police Station,
Krishnagiri District.
(Cr.No.510 of 2013) .. Respondent/Complainant

Prayer:- Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in S.C.No.174 of 2016 dated 30.01.2024 on the file of the learned Additional Sessions Judge, Krishnagiri, and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

For Petitioners : Mr.A.Padmanabhan



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for Mr.R.Prabakar
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners/A1 & A2 by judgment and order dated 30.01.2024 passed in S.C.No.174 of 2016 on the file of the learned Additional Sessions Judge, Krishnagiri, and to enlarge the petitioners on bail pending disposal of the appeal.

2. The petitioners, who are arrayed as A1 & A2 in the above Sessions Case, was convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A1 & A2	302 IPC	Each of them sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months.

3. Challenging the above conviction and sentence, the petitioners have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present petition.



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4. Heard Mr.A.Padmanabhan, the learned counsel appearing for the petitioners/A1 & A2 and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that on 03.11.2013 at about 5.00 p.m., PW3-Balamurugan was driving his omni car and while trying to pass the house of the accused, finding a dog sleeping in the road, he honked the horn to chase it away; that A1 to A4 came out of their house and abused PW3-Balamurugan; that there was a wordy quarrel, as a result of which the accused attacked PW1 to PW3; that one Muniyappan, the deceased came to pacify; that A1 cut the deceased on his head with an Aruval; A2 hit on the neck of the deceased with a stick, as a result of which the deceased died.

6. Mr.A.Padmanabhan, learned counsel appearing for the petitioners submitted that the prosecution has suppressed the fact that the accused were injured in the occurrence; that a counter case was registered on the complaint given by A2 and that an FIR in Cr.No.511 of 2013 was registered



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which culminated in a final report and ultimately, the accused therein were convicted in SC No.43 of 2019; that most of the allegations made by the witnesses were disbelieved by the trial Court including the alleged attack said to have been made on the witnesses; that the medical report is contrary to the allegations in the final report besides the evidence of the witnesses themselves; and therefore, submitted that the petitioners are entitled for suspension of sentence.

7. The learned Additional Public Prosecutor *per contra* submitted that the trial Court had considered the fact that it was not a case in counter as the occurrence took place at a different time; that the trial Court has carefully considered all the evidence and found the petitioners/appellants guilty of the offence of murdering the deceased; and that the petitioners have not made out any case for suspension of sentence. Hence, he prayed for dismissal of the petition.

8. Firstly, we find that though there is a slight variation in the time, the investigating officer has treated the cases as case and counter case. In both cases, he filed the final report without ascertaining who the aggressor was.



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Two versions which are contrary to each other have been accepted as true by the investigating officer, which is inappropriate. Both versions cannot be true.

9. We also find that the accused in the counter case initiated by the complaint given by A2, were convicted by the trial Court in S.C.No.43 of 2019. That apart, the witnesses viz., PW1 to PW3 have been disbelieved by the trial Court in the instant case, in most aspects, including the attack said to have been made on them. The postmortem certificate, which notes one laceration wound in the head, also belies the prosecution case that the deceased was attacked by an Aruval. That apart, A3 and A4 have been acquitted by the trial Court disbelieving the same witnesses. Thus, we are of the view that the petitioners have a fair chance of success in the appeal. However, we hasten to add that the above observations are only an expression of our *prima facie* view.

10. Considering the above and the fact that the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of



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suspension of sentence to the petitioners herein/A1 & A2.

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11. In view of the above, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioners/A1 & A2 is suspended on the following conditions:

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Additional Sessions Judge, Krishnagiri;
- (ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal 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.

[M.S.R.,J.] [S.M.,J.]
25.03.2024

Issue order copy by 25.03.2024



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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars

To

- 1.The Additional Sessions Judge,
Krishnagiri.
- 2.The Inspector of Police,
Taluk Police Station,
Krishnagiri District.
- 3.The Superintendent of Prisons,
Central Prison, Vellore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

Pre-delivery order in

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25.03.2024