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Crl.M.P.No.8555 of 2023
in Crl.A.No.657 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.8555 of 2023
in Crl.A.No.657 of 2023

Bhaskar

... Petitioner

Vs.

1.The State rep. by the
The Deputy Superintendent of Police,
Ulundurpet Sub-Division,
Villupuram District.

2.The State rep. by the
Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District.
Crime No.681 of 2017.

3.Bharathipriya
D/o.Samynathan,
Kangarayanur Post,
Thirukovilur Taluk,
Villupuram District.

[R3 impleaded as per order dated 30.06.2023
in Crl.M.P.No.9220/2023 in Crl.A.No.657/2023]

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section



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389(1) of Code of Criminal Procedure, to suspend the sentence passed in S.C.No.73 of 2017 dated 27.02.2023 on the file of learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram and enlarged the petitioner on bail pending disposal of Criminal Appeal.

For Petitioner : Mr.N.S.Suganthan
For R1 & R2 : Mr.S.Rajakumar
Additional Public Prosecutor
For R3 : Ms.M.Malaiyarasi

ORDER

This petition has been filed to suspend the sentence imposed on the petitioner passed in S.C.No.73 of 2017 dated 27.02.2023 on the file of learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram and enlarged the petitioner on bail pending disposal of Criminal Appeal.

2. The petitioner/accused has been convicted by the Trial Court in



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S.C.No.73 of 2017 and sentenced him to undergo Rigorous imprisonment for 7 years for the offence under Section 304(ii) IPC and to undergo Rigorous imprisonment for 3 years for the offence under Section 135(1)(a) of the Electricity Act, 2003. Challenging the same, the petitioner preferred an appeal before this Court and seeks suspension of sentence.

3. During trial, on the side of the prosecution PW.1 to PW.16 examined and marked Exs.P1 to P14 and 6 material objects. On the defence side, no witness was examined and no exhibit was marked.

4. The contention of the petitioner is that the petitioner along with his brother were charged for offence under Section 135(1)(a) of Electricity Act, Section 304(ii) IPC and Section 3(2)(v) of SC/ST (POA) Amendment Act, 2015. His brother A2 passed away during the pendency of the trial.

5. The learned counsel for the petitioner submitted that the petitioner and the deceased Mrs.Baby and Ezilkumar are adjacent land owners. On 26.07.2017, at about 9.15 p.m., both of them had gone to the agricultural



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land to irrigate the sugarcane field. Since they failed to return after next day, baby son PW.2-Prasanth went in search of them, found both his mother and brother dead due to electrocution. The petitioner fenced his sugar cane field and energized it with electricity to save his crops from wild bore menace. They both accidentally came in contact with the electric wire and succumbed to shock. The deceased Mrs. Baby and Ezilkumar were aware of that place is visited by wild bore, often that to eat sugarcane shoots. Hence, to save the crops, it is usual for the villagers to fence their crops and energize the same. In this case, the deceased who are adjacent land owners are very much aware of this practice not taken precaution while entering the field and it is only an accidental death. The learned counsel further submitted that in this case postmortem doctor PW.14 confirms that the death was due to shock. PW.10-Krishnamoorthi, villager admitted that it is usual practice in the village to fence the field and also electrify the same to save the crops from wild bore attack. He further submitted that to show his concern, for loss of life due to the accident without prejudice, he had taken a demand draft bearing No.136765, dated 26.02.2024 for Rs.2,00,000/- in the name of the defacto complainant. The trial Court acquitted the petitioner for



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the charges of Section 3(2)(v) of SC/ST (POA) Amendment Act, 2015. The trial Court found that the petitioner has no intention or used any abusive words, since the deceased belonging to scheduled caste community, Section for offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atroci), 1989 added. The petitioner is in prison from the date of judgment and in total, he has been in prison for 8 months.

6. The learned Additional Public Prosecutor on the other hand filed his counter and submitted that the case of the prosecution is that on 27.07.2017 the Defacto complainant Bharathy Priya lodged a complaint to the respondent police that the defacto complainant's mother Baby and her brother Ezhil Kumar went to the sugar cane field on 27.07.2017 at about 21.15 hours in Kongarananur Village. The accused persons and the defacto complainant's lands are situated Adjacent sides to each other. The accused persons repeatedly forced the de-facto complainant's Mother to give her land for sale and the same was refused by her. The accused persons planned to do away the de-facto complainant's mother. The De-facto complainant's mother deceased (Baby) used to take water from the electric motor



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belonging to the accused-1. The accused in order to prevent wild pigs from destroying the sugarcane crops have drawn electricity from the electric pole situated in Accused-1 land by hooking and energized the fence knowingly done this act. When the deceased Baby and her son Ezhilkumar went to draw water for their field, they came in contact with the electric fence and succumbed to shock. Hence, the complaint.

6.1. It is submitted that based on the complaint, a case was registered at Thiruvannainallur Police Station, Crime No.681 of 2017 U/s.304(ii) IPC r/w 135(i)(a) IEA Act r/w 3(2)(v) SC/ST Act 1989 on 27.07.2017 at about 09.30. hours by Tr.Jokindhar, the then Inspector of Police and submitted the same before the then Deputy Superintendent of Police and he took up the case for investigation.

6.2. It is submitted that as per the proceedings of the Superintendent of Police, the then Deputy Superintendent of Police took up the case for investigation and went to the scene of occurrence, drew rough sketch, prepared observation mahazar in the presence of witnesses and conducted inquest on deceased body and prepared inquest report and sent the deceased body for post mortem to the Government Hospital and after completion of



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post mortem, the deceased body was handed over to the complainant.

Further, he examined the witnesses and recorded their statements.

6.3. It is submitted that during the course of investigation, on 27.07.2017 at about 19.00 hours, the then Inspector of Police arrested the accused person A1/Bhaskar and recorded his confession statement, later, produced him before Judicial Magistrate, Ulundurpet who remanded him to judicial custody.

6.4. It is submitted that after completion of elaborate and detailed investigation, based on the statement of witnesses and material evidences, the then Inspector of Police filed charge sheet against accused persons A1 and A2 before the Learned Special Court For Exclusive Trial of Cases Registered under the SC/ST (Prevention of Atrocities) Act, 1989, Villupuram and the same was taken on file vide S.C.No.73 of 2017 dated 29.09.2017.

6.5. It is submitted that the prosecution examined 16 witnesses and marked 14 exhibits and M.O.1 to M.O.6 marked. On defence side, no witness, no exhibits and no material objects marked. During the course of trial, the accused-2/babu died, hence charges against him abated.



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6.6.PROSECUTION SIDE WITNESSES:-

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Rank of Witnesses	Witnesses	Gist of the Deposition
P.W.1	Selvi.Bharathi Priya/Daughter of the deceased/De-facto complainant	Deposed that her Mother and brother went to their Sugarcane field for irrigating the field. At the time the accused persons A1 and A2 laid a electric fence to protect their land form Wild Pig. Without knowing that her mother and brother were contact with electric fence and succumbed to death. Hence, she lodged a complaint before the respondent police [Ex.P1]
P.W.2	Tr.Prasant/Son of the deceased	Deposed that he went to the sugarcane field in search of his mother and brother. He only saw the deceased person and informed the same to the Defacto complainant.
P.W.3	Tr.Sakthivel/brother-in-law of the deceased person	Deposed that when he was in home, after his brother's Son informed the incident and he went to the field and noticed the deceased person were in contact with the electric fence.
P.W.4	Tr.Mathiazhagan/Brother of the Deceased	Corroborated with the P.W.3
P.W.5	Tr.Aruljothi/Relative of the Deceased	Corroborated with the PW.3
P.W.6	Tr.Masilamani	Corroborated with the PW.3
P.W.7	Tr.Pazhani/Assistant Engineer in TNEB	Deposed that the Assistant Engineer in TNEB visited the occurrence place and identified the deceased persons were contacted with electric fence. Then he cut the electric power to secure the Body.
P.W.8	Tmt.Nalini/Thasildhar	Deposed that she is working as Thasildhar issued Community



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		Certificate to the deceased persons and the accused persons [Ex.P2]
P.W.9	Tr.Perumal/Relative of the deceased persons	Deposed the same version of the PW.3
P.W.10	Tr.Krishnamoorthi/Relative of the Deceased persons	Deposed the same version of the PW.3
P.W.11	Tr.Sathiyannarayanna/Observation Mahazar Witness	Deposed that he attested in the observation Mahazar (Ex.P3)
P.W.12	Dr.Arun	Deposed that he has found burnt injuries due to passage of electricity in the left leg fingers in the shoulder and he has opined that the deceased died due to electricity shock.
P.W.13	Dr.Shanmugam/Post Mortem Doctor	Deposed that he conducted post mortem on deceased body and issued a Post mortem report Ex.P5
P.W.14	Tr.Venkatesan/Grade-I P.C	Deposed that as per the instruction of investigation officer, he produced the deceased inner parts for the chemical analysis
P.W.15	Tr.Jokindhar/Inspector of Police	Deposed that he received the complaint and registered a case in Cr.No.681 of 2017 [Ex.P6] and submitted the same before the P.W.16 for investigation
P.W.16	Tr.Radhakrishnan/Deputy Superintendent of Police	Deposed that he took up the case for further investigation and went to the scene of occurrence and drew rough sketch [Ex.P8-Rough sketch] and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements and seized the material objects under the cover of seizure Mahazar [Ex.P9] and arrested the accused and recorded his confession statement and remanded him into



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judicial custody and conducted inquest on deceased body and prepared a inquest report-Ex.P11 and Ex.P12 and obtained the post mortem report and sent a requisition letter to Forensic Science Laboratory-Ex.P13 & Ex.P14 and complete the investigation filed a charge sheet before the competent court in accordance with law.

6.7. It is submitted that after due trial, the Trial Court (i.e.) Learned Special Court for Exclusive Trial of Cases Registered under the SC/ST (Prevention of Atrocities) Act, 1989, by its judgment in S.C.No.73 of 2017, dated 27.02.2023, the petitioner/Accused A-1 is found guilty and convicted for the following offences:-

U/s.304(ii) IPC	Sentenced him to undergo 7 years Rigorous Imprisonment
U/s.135 (1) (a) of the Electricity Act, 2003	Sentenced him to undergo 3 years Rigorous Imprisonment

Hence, prays to dismiss the petition.



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7.The second respondent/defacto complainant had filed counter, in which, she has stated that the defacto complainant earlier had lost her father in the year 2014 and her mother raised them as a single parent by working very hard as daily wager to provide education and other needs. The defacto complainant, his three brothers and her mother used to do agricultural work in the field and also go for daily wage work. On 26.07.2017 at about 9.15 p.m., the defacto complainant's mother along with his brother Ezilkumar gone to irrigate the field and never returned back. The defacto complainant's hoping that her mother and brother would return, she had gone to sleep. Her younger brother Prasanth finding that even after the dawn, the mother and brother not reached home, hence he rushed to the field and found his mother and brother lying dead due to current shock. This has happened because of the petitioner had put up the electric fence without any warning and any precaution, since the power drawn from the main line, the shock was intensive and on immediate contact, both of them died.



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8. He further submitted that since the petitioners are adjacent land owner, they some how needed the property of the defacto complainant's mother of one acre and finding the defacto complainant's mother, a single lady, without any help or support. For that reason, fenced the field with electric wire, not informed without the adjacent land owners. He further submitted that the trial Court acquitted the petitioner for offence under Section SC/ST Act. Against which, she intents filing an appeal.

9. The learned counsel for the petitioner submitted that it was an accidental death or on act without any intention and knowledge.

10. The learned counsel for the defacto complainant submitted that the petitioner belonging majority community in the village might cause harm to them. The defacto complainant and her brother fear threat for their life and also fear to continue with agricultural activities.

11. The learned counsel for the petitioner submitted that the trial Court had rightly found no offence made under SC/ST Act and it is only an



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accidental death. He further submitted that he would file an affidavit before the Court that he is not interested to purchase the adjacent land by force and he would not cause any threat to the defacto complainant and her brother and not interface with peaceful enjoyment of the property by them. Further, whatever right existed in watering their agricultural land from and through the petitioner's land would continue without any disturbance or hindrance.

12. Considering the submissions and materials, this Court finds that the petitioner had fenced his property and also energized with electricity, but not informed to the defacto complainant's family about the same not taken due care. Due to which, Mrs.Baby came in contact with electric fence which is confirmed by the medical evidence and other evidence. The fence energized with electricity without any permission. Admittedly, the victim in this case is adjacent land owner, who had been drawing water from the petitioner's well, that relationship cordial. They have been sharing water and they are also paying for the same. In the village, attack of wild bore to the crops happens. Due to which, agriculturist suffer and they take all measures to save the crops. But in this case, the petitioner seems to be acted and



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drawn electricity from the main line. In view of the same, this Court is inclined to suspend the sentence imposed on the petitioner.

13. The petitioner, after coming out on bail, to file an affidavit before the trial Court within two weeks affirming that he and his family members would not cause any threat to the defacto complainant and defacto complainant's family members to continue their agricultural activities, the petitioner would not force the defacto complainant to part their property. Further, all facilities enjoyed by the defacto complainant and her family irrigating and cultivating in their agriculture land would continue to be provided without any obstruction or hindrance.

14. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten



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thousand only) with two sureties, each for a like sum to the satisfaction of the learned Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if he is not able to appear before the Trial Court on that 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.



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15. Accordingly, this Criminal Miscellaneous Petition is ordered.

16. This Court appreciates Ms.M.Malaiyarasi appointed as legal aid counsel for the 3rd respondent in rendering her sincere efforts in this regard.

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Note: Issue order copy on 12.03.2024



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To

1. The Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram.

2. The Deputy Superintendent of Police,
Ulundurpet Sub-Division,
Villupuram District.

3. The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District.
Crime No.681 of 2017.

4. Bharathipriya
D/o. Samynathan,
Kangarayanur Post,
Thirukovilur Taluk,
Villupuram District.

5. The Public Prosecutor,
High Court, Madras.

Copy to

The Central Prison, Cuddalore



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M. NIRMAL KUMAR., J.

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