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Crl.M.P.No.10767 of 2023  
in Crl.A.No.774 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH  
AND  
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.10767 of 2023  
in Crl.A.No.774 of 2023

1.S.Sudhakar

2.G.Selladurai

3.Chandra

... Petitioners

*Vs.*

The State rep. by its  
The Inspector of Police,  
Thiruthuraipoondi Police Station,  
Tiruvarur District.  
(Crime No.134 of 2020)

... Respondent

**PRAYER:** Criminal Miscellaneous Petition filed under Section 389(2) of the Criminal Procedure Code, seeking to suspend the sentence imposed by the District and Sessions Court, Tiruvarur on 28.11.2022 in S.C.No.12 of 2021 till the disposal of the appeal preferred by the petitioners/appellants and enlarge the petitioners on bail.

For Petitioners : Mr.K.M.Subramanian



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For Respondent : Mr.E. Raj Thilak,  
Additional Public Prosecutor  
assisted by Mr.C.Aravind

### **ORDER**

*(Order of the Court was delivered by **SUNDER MOHAN, J.**)*

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioners by the learned District and Sessions Judge, Tiruvarur, on 28.11.2022 in S.C.No.12 of 2021 and enlarge them on bail.

2. The learned District and Sessions Judge, Tiruvarur, in S.C.No.12 of 2021, has convicted the petitioners and sentenced them as follows:-

| <b><i>Accused</i></b> | <b><i>Offence</i></b>      | <b><i>Sentence imposed</i></b>                                                                                    |
|-----------------------|----------------------------|-------------------------------------------------------------------------------------------------------------------|
| A1                    | Section 302 of IPC         | Life imprisonment along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months.         |
|                       | Section 307 r/w. 34 of IPC | 5 years rigorous imprisonment along with a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment. |



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|    |                               |                                                                                                                   |
|----|-------------------------------|-------------------------------------------------------------------------------------------------------------------|
| A2 | Section 302 r/w.<br>34 of IPC | Life imprisonment along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months.         |
|    | Section 307 of<br>IPC         | 5 years rigorous imprisonment along with a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment. |
| A3 | Section 302 r/w.<br>34 of IPC | Life imprisonment along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months.         |
|    | Section 307 r/w.<br>34 of IPC | 5 years rigorous imprisonment along with a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment. |
|    | Section 352 of<br>IPC         | 3 months simple imprisonment.                                                                                     |

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

4. Heard Mr.K.M.Subramanian, learned counsel appearing for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.



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5. It is the case of the prosecution that the petitioners and the deceased were neighbors; that when the deceased was scolding his children on 18.03.2020 at about 10.30 p.m, the third petitioner came to the house of the deceased and shouted at him saying that by scolding his children, he was indirectly referring to her family members, as a result of which, a wordy quarrel arose; that the first and second petitioners attacked the deceased and P.W.1 with a bamboo log and palmirah tree branch, as a result of which, the deceased and P.W.1 suffered injuries and that the deceased died the next day.

6. The learned counsel for the petitioners submitted that before the doctor (P.W.7), P.W.1 had stated that the injuries sustained were due to the sudden fall from a two wheeler bike; that the complaint was lodged only on the next day after deliberation. Since both the deceased and P.W.1 were taken to the hospital on the date of occurrence and intimation was also sent to the Police on the same day, the report registered by the Police cannot be said to be the first information.

7. Per contra, the learned Additional Public Prosecutor submitted that the occurrence was witnessed by 3 eye witnesses namely the wife of



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the deceased (P.W.1) and his children (P.W.2 & P.W.3), out of which, P.W.1 was an injured eye witness and that P.W.1 had explained as to why she had stated differently in the Accident Register and therefore, he opposed the suspension of sentence to the petitioners.

8. We have perused the records carefully and considered the rival submissions.

9. It is seen from the Accident Register (Ex.P7), P.W.1 had stated before the doctor when she was first examined, that she sustained injuries due to a fall from a two wheeler bike. Further, we also find that though the deceased and P.W.1 were admitted to the hospital on the day of occurrence, the F.I.R. came to be registered only at 11 a.m. the next day. There is no explanation by the prosecution for the delay in registering the F.I.R. In the Accident Register pertaining to the deceased (Ex.P6), it is mentioned that the deceased was assaulted by 3 known persons. Therefore, intimation would have been given to the Police. The presence of Police at the hospital before the registration of F.I.R. cannot be ruled out, which probabalizes the defence version that the earliest information had been



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suppressed by the prosecution. It is also seen that the first petitioner is suffering from cancer as seen from the medical report submitted by the learned counsel for the petitioner.

**10.** Considering the above facts and that the petitioners are in custody since 28.11.2022 and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence and grant bail to the petitioners.

**11.** Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioners is suspended on the following conditions:-

(i) The petitioners shall execute a bond for a sum of Rs.25,000/-, with two sureties each, each for a like sum to the satisfaction of the learned District and Sessions Court, Tiruvarur;

(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



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to ensure their identity;

(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.)

18.03.2024

Index: Yes/No

***Sni***

*Note: Issue Order Copy on 20.03.2024*



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**M.S.RAMESH, J.**  
**and**  
**SUNDER MOHAN, J.**

*Sni*

To

1.The District and Sessions Court,  
Tiruvarur.

2.The Inspector of Police,  
Thiruthuraipoondi Police Station,  
Tiruvarur District.

3.The Superintendent  
Central Prison for Women,  
Tiruchirappalli.

4.The Superintendent,  
Central Prison, Tiruchirappalli.

5.The Public Prosecutor,  
High Court, Madras.

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