



Crl.M.P.No.13897 of 2024 in Crl.A.No.465 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.13897 of 2024

in

Crl.A.No.465 of 2024

1. P.Sathish Kumar
S/o.Panneerselvam
2. T.Iyyappan
S/o.Thangavel
3. M.Raja
S/o.Mayavan

... Petitioners

Vs.

State by
The Inspector of Police,
N-4, Fishing Harbour Police Station
Chennai-600 081
Crime No.341 of 2018

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C/ 430(i) BNSS, to suspend the sentence passed by the learned XXI Additional City Civil Court at Allikulam, Chennai in S.C.No.280 of 2019 dated 27.03.2024 and the petitioners may be enlarged on bail, till disposal of the above said Appeal.



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Crl.M.P.No.13897 of 2024 in Crl.A.No.465 of 2024

For Petitioners : Mr.S.Vijayaraghavan
For Respondent : Mr.R.Vinoth Raja
Government Advocate (Crl.Side)

ORDER

The petitioners/accused were convicted by the trial Court in S.C.No.280 of 2019 by judgment dated 27.03.2024 for the offences under Section 304(2) r/w 34 IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months. Aggrieved by the same, the petitioners have preferred the present appeal along with the petition seeking suspension of sentence.

2. The contention of the petitioners is that, P.Ws.1 and 2 had been projected as eye-witnesses. The evidence of P.Ws.1 and 2 are contradictory to each other. P.W.1 in his evidence has stated that the deceased was taken to Government Hospital by one Sathish Kumar (A1). P.W.2 has stated that some nearby persons have taken the deceased in an Auto and he was admitted in the Hospital. P.W.7-brother of the deceased, stated that he had taken the deceased to the Hospital. The Doctor/P.W.11, who had registered the Accident Register



has stated that in the Accident Register that the deceased was brought by one Sathish Kumar (A1) to the Hospital. Further, in the post-mortem Report/Ex.P3, the name of the deceased is recorded, but on the other hand, P.W.9./Sub Inspector of Police has stated that the name of the deceased came to be known only three days later when the brother of the deceased was examined. The presence of the petitioners in the scene of occurrence is highly doubtful. The Doctor/P.W.6, who conducted post-mortem had issued Ex.P3/post-mortem report. From Ex.P3, it is seen that the deceased had sustained blunt injuries on his shoulder, hand, leg and stomach and ribs and none of the injuries are found on the vital parts of the deceased. Further, nobody has spoken about the specific overt act committed by the petitioners. In any event the conviction of the petitioners under Section 304(2) r/w 34 IPC is not be sustainable.

3. Learned Government Advocate (Crl.Side) appearing for the respondent/Police has filed a counter affidavit and submitted that on 30.06.2018 at about 2.00 a.m., the petitioners herein were found the deceased Jerald in a boat of Arputham and he was sleeping at that time when the petitioners/A1 to A3, who were workers of the said Arputham's boat, joined together and caught hold of the deceased and tied him in the master wood of



the boat with a rope and questioning him and assaulted him with a fish net and paddle-board. Thereafter, on hearing of the hue and cry of Jerald, others had assembled and he was taken to the hospital, where P.W.11 had examined the victim admitted in the hospital and later, he succumbed to injuries. P.W.6, who had conducted the post-mortem of the victim, confirmed the injuries sustained by the victim and issued Ex.P3/post-mortem certificate. P.W.1 and P.W.2 had clearly identified the accused persons, who had assaulted the deceased, and thereafter, on the arrest of accused persons, a case was registered against them in Crime No.341 of 2018 under Section 302 IPC @ to 304(1) r/w 34 IPC and the charge sheet has been filed. During trial, P.W.1 to P.W.12 were examined and Exs.P1 to P.15 were marked and material objects M.O.1 to M.O.4 were produced. On conclusion of the trial, the trial Court convicted the accused for the offence under Section 302 (2) r/w 34 IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months, which is a lesser punishment and hence, the present petition may be dismissed.

4. Heard the learned counsel on either side and perused the materials available on record.



5. Considering the above submissions and on perusal of the materials available on record, it is seen that two persons viz., P.W.1 and P.W.2 have identified the accused persons, however, the evidence of P.W.1 and P.W.2 are contradictory to each other. Further, P.W.1 stated that he was passing through the fishing boat at that time when he heard the voice and seeing that the deceased was assaulted by the petitioners. P.W.2 admitted that he is a street vendor, who is under the mercy of the police. It is also seen that on that date in the early hours between 2.00 a.m. to 3.00 a.m., in the fishing harbour, the persons will be busy with activities, bringing the deceased from the boat taking in an Auto without notice of others in the harbour is not possible. Further, it is also seen that no other public in and around the fishing harbour have been examined, the other fishermen present in the nearby boats, not examined. Further, it is seen that deceased had sustained blunt injuries on his shoulder, hand, leg and stomach and ribs and no injuries found on the vital parts of the deceased

6. In view of the contradictory evidence of P.W.1 and P.W.2 and the injuries found on the deceased, this Court finds that the conviction of the petitioner under Section 304 (2) IPC needs to be re-considered.



Crl.M.P.No.13897 of 2024 in Crl.A.No.465 of 2024

7. Accordingly, the substantive sentence of imprisonment imposed on the petitioners alone is suspended till the disposal of the above appeal and they are ordered to be enlarged on bail, on condition that each of the petitioners/A1 to A3 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, petitioners/A1 to A3 shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the Criminal Appeal and if they are not able to appear before the Trial Court on that 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 the same month, in lieu of the date of their absence, as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

22.10.2024

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Crl.M.P.No.13897 of 2024 in Crl.A.No.465 of 2024

To

1. The XXI Additional City Civil Court,
Chennai.
2. The Superintendent,
Central Prison, Puzhal Prison-I,
Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Inspector of Police,
N-4, Fishing Harbour Police Station
Chennai-600 081.



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Crl.M.P.No.13897 of 2024 in Crl.A.No.465 of 2024

M.NIRMAL KUMAR, J.

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Crl.M.P.No.13897 of 2024
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