



Crl.M.P.No.17590 of 2023 in Crl.A.No.935 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.17590 of 2023
in Crl.A.No.935 of 2023

Rajendran,
S/o.Thangarasu

... Petitioner

Vs.

State by
The Inspector of Police,
Thirumanur Police Station,
Ariyalur.
(Crime No.59/2019).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to enlarge the petitioner on bail by suspending the sentence imposed on him in S.C.No.134 of 2019 on the file of the Principal District and Sessions Judge of Ariyalur, dated 31.07.2023 pending disposal of the above appeal.

For Petitioner	:	Mr.B.Kumarasamy
For Respondent	:	Mr.S.Rajakumar, Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the judgment, dated 31.07.2023 in S.C.No.134 of 2019



by the learned Principal District and Sessions Judge, Ariyalur (trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The petitioner was convicted by the trial Court for offence under Section 304(ii) of IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo one month Simple Imprisonment. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal and the present Suspension of Sentence.

3.Gist of the case is that the defacto complainant/PW1 and the deceased Ravi are spouses. The petitioner/A1 is the elder brother of the deceased Ravi and A2 is the son of the petitioner/A1. The deceased Ravi constructed house in front of the thatched hut to the petitioner. On 29.04.2019, at about 06.00 p.m., the deceased Ravi engaged a person to pluck coconuts, at that time, one coconut fell down on thatched hut of the petitioner. Due to which, Iyyammal and Vimala, wife and daughter of petitioner picked up quarrel with the deceased Ravi and threw a stone on



him. Later, at the intervention of villagers, the fight was discarded. At about 08.00 p.m., Vinothkumar/A2 along and his mother Iyyammal entered the house of defacto complainant/PW2 assaulted them with small wind pipe and abused. Due to which, there was exchange of blows and the said Iyyammal and Vimala sustained injuries and took treatment. On the next day (30.04.2019), the defacto complainant and her husband deceased Ravi informed the incident to one Duraimurugan. While they were coming back home, near the house of one Gangadhurai, the petitioner and his son/A2 were standing there. A2 shouted at his father/A1 to attack the defacto complainant's husband with sickle (MO1). When the petitioner attempted to attack the deceased on his neck, the deceased prevented the attack using his hands and thereby, he sustained grievous bone depth cut injuries on both of his hands, fell down. The defacto complainant shouted for help, on seeking PW2, PW3 and PW4 coming there, the accused fled in their two wheeler. One Chithra tied cloth to prevent oozing of blood from the hands of the petitioner. Thereafter, the villagers called 108 Ambulance. Since it took time for Ambulance to arrive, they took the injured Ravi in Tata Suma of Gangadhurai. The defacto complainant took her husband to Thanjavur



Medical College and Hospital, where PW9, the Casualty Doctor examined the injured Ravi and found bone deep cut injuries on the left and right forehead and bruise on the leg and issued Accident Register (Ex.P2). Thereafter, the injured was gasping for breath and after few hours, the injured succumbed to injuries and dead. PW13, Sub Inspector of Police, received the complaint (Ex.P1) and registered FIR (Ex.P17). PW14, Investigating Officer took up investigation, visited the scene of occurrence, recorded the statement of the defacto complainant/PW1, her son/PW2 and three other witnesses present in the scene of occurrence and in presence of PW3 and PW5 prepared Observation Mahazar (Ex.P18), Rough Sketch (Ex.P19) and Seizure Mahazar (Ex.P20). Thereafter, the accused was arrested on 01.05.2019 in presence of PW7, sickle (MO1) seized. The deceased body sent for postmortem. PW11, Postmortem Doctor conducted autopsy and gave report (Ex.P13). Thereafter, the viscera was sent for forensic examination. On completion of investigation collecting documents and materials, charge sheet filed before the trial Court against the petitioner and his son/A2.



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4. During trial, on the side of the prosecution, fourteen witnesses examined as PW1 to PW14 and twenty four documents marked as Exs.P1 to P24 and marked seven Material Objects as MO1 to MO7. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner and acquitted A2 as stated above.

5. The learned counsel for the petitioner submitted that the deceased is none other than the younger brother of the petitioner. The deceased constructed house in front portion of the petitioner's thatched hut. Prior to the occurrence, there was constant fight between both the family members with regard to property dispute. Due to which, the petitioner and his family moved away from the place and was residing in a rental house. On 29.04.2019, the deceased engaged a person to pluck coconut, at that time, one coconut fell down on the petitioner's thatched hut which caused damage and the same was questioned by the petitioner's wife Iyyammal and daughter Vimala. On the same day, at about 08.00 p.m., the defacto complainant and



her son assaulted the petitioner's wife and daughter who sustained serious injuries and took treatment. This information was sent to the petitioner who was working in Kerala. Later, he came back to his native and questioned the same. The defacto complainant/PW1 admits that earlier, she and her family members had fight with one Murugan, further deceased was not good health. Due to the property dispute, the petitioner falsely implicated in this case. In this case, the defacto complainant/PW1 is not an eye witness and she was not present in the scene of occurrence. The defacto complainant/PW1 in her complaint stated that the petitioner and her son/A2 were standing near the house of Gangadhurai and they attacked them. But in her evidence stated that both the petitioner and his son came in a two wheeler and attacked. In this case, earlier complaint which was given to the Police suppressed.

6.PW1 in her complaint admitted that within 45 minutes of the occurrence, the respondent Police came to the spot, enquired her injured husband and her husband informed about the occurrence but the same suppressed. Hence, the genesis of the case is doubtful. The Investigating



Officer not stated what was the enquiry conducted and what was the statement of the deceased Ravi, but on the other hand the prosecution proceeds as though from the hospital, information was received and PW12, the Sub Inspector of Police came to the hospital and recorded the statement of PW1. PW9, the Casualty Doctor in the Accident Register (Ex.P12) recorded only three injuries sustained by the deceased, that too, cut injuries on the right and left forearm and some bruises. PW11, the Postmortem Doctor in his report gave opinion that the deceased died for complications of multiple sharp force injuries sustained but no reason given for such complications. Admittedly, the injuries are only on the forearms.

7.He further submitted that the trial Court disbelieved the evidence of PW2, who is the son of PW1 and deceased and convicted the petitioner based on the motivated witness i.e., PW1. The overtact attributed by PW1 does not corroborate with the medical evidence. Added to it, the presence of PW1 is highly doubtful. In this case, the projected eye witnesses viz., PW3, PW4 and PW5 not supported the case of the prosecution. The evidence of PW6 and PW7 are in the nature of hearsay. PW8 is the witness for arrest,



confession and recovery who has not supported the case of the prosecution.

The other witnesses viz., PW9 and PW11 are Doctors and PW12 to PW14 are Police personnels. The trial Court believing the evidence of PW1 and convicting the petitioner is not proper. The trial Court on the same of evidence disbelieved the same as against A2, but convicted the petitioner which is not proper. Further, for the earlier occurrence happened on 29.04.2019 and the injuries sustained by the petitioner's wife Iyyammal and daughter Vimala recording the statement of the deceased Ravi all suppressed. The prosecution failed to produce true facts before the trial Court and the trial Court failed to consider the same. In view of the genesis of the case becomes doubtful, the trial Court ought to have acquitted the petitioner. Hence, he prays for suspension of sentence till the disposal of the appeal.

8.The Government Advocate (Criminal Side) appearing on behalf of the respondent Police opposed the suspension of sentence stating that the categorical evidence of PW1 is that on 30.04.2019, the defacto complainant and her husband deceased Ravi informed the incident happened on



29.04.2019 to one Duraimurugan. While they were coming back home, near the house of one Gangadhurai, the petitioner and his son/A2 were standing. A2 shouted at his father/A1 to attack the defacto complainant's husband with sickle (MO1). When the petitioner attempted to attack the deceased on his neck by MO1, the deceased prevented the attack using his hands and thereby, he sustained grievous bone depth cut injuries in both hands, fell down. The defacto complainant shouted for help, on seeing PW2, PW3 and PW4 coming there, the accused fled away by two wheeler. Immediately, PW1 took the injured husband to Thanjavur Medical College and Hospital by Tata Sumo of said Gangadhurai. PW9, the Casualty Doctor examined the deceased, recorded the injuries sustained in Accident Register (Ex.P12). Since his health condition was deteriorating and he was gasping, the deceased was admitted as inpatient, within few hours, he passed away and information was sent to the respondent Police. PW13, the Sub Inspector of Police came to the hospital, recorded the statement of PW1, received the complaint (Ex.P1), registered FIR (Ex.P17). Thereafter, PW13 forwarded the FIR (Ex.P17) to PW14, the Investigating Officer. PW14 visited the scene of occurrence, recorded the statement of witnesses present



in the scene of occurrence, prepared Observation Mahazar (Ex.P18), Rough Sketch (Ex.P19) in presence of witnesses, seized the articles found in the scene of occurrence, recorded the statement of eye witnesses, conducted inquest, sent the body for postmortem. PW11 conducted postmortem and issued postmortem certificate (Ex.P13) confirming the cause of death. In presence of PW8, the accused was arrested, on his confession, MO1 recovered. In MO1, the presence of human blood confirmed by the serological report (Ex.P24).

9.He further submitted that though the deceased might have some health complications, the death was due to attack and injuries caused by the petitioner which is proved by PW11 and Exs.P13 and P14. In this case, the other eye witnesses viz., PW3 & PW4 not supported the case of the prosecution since they are neighbours known to both families of the petitioner and deceased. The evidence of PW2 was disbelieved by the trial Court since he stated that he came to the scene of occurrence only after hearing cry of his mother/PW1, and PW1 informed about the occurrence, but PW1 not stated in her evidence. For these reasons, PW2's evidence has



been discarded by the trial Court. It is not the number of witnesses is required it is only the quality of witness. PW1 was very much present in the scene of occurrence and she clearly stated about the motive and the occurrence proper in her evidence. PW1 stated that she took her injured husband to the hospital which is confirmed by PW9, the Casualty Doctor. In this case, though other witnesses turned hostile, it would not affect the prosecution case. The trial Court believing the evidence of PW1, other attendant circumstances and the materials convicted the petitioner under Section 304(ii) of IPC. Hence, prays for dismissal.

10. On careful consideration of evidence and materials, it is seen that the only witness in this case is PW1 who is none other than the wife of the deceased. There was enmity between the petitioner and deceased family. Prior to this occurrence, an incident happened on 29.04.2019, no investigation has been done by the respondent Police despite Ex.P1 discloses the same. Added to it, in Ex.P1, it is clearly stated that within 45 minutes of the attack, the respondent Police came to the scene of occurrence, enquired her husband about the attack. This fact suppressed. The injuries found on



the deceased is only on the forearm and not on any vital parts of the body.

In view of the same, the conviction of the petitioner for offence under Section 304(ii) of IPC needs reassessment.

11.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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.

12.The petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m., until the disposal of the appeal 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. Accordingly, this Miscellaneous Petition is ordered.

10.01.2024

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To
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- 1.The Principal District and Sessions Judge,
Ariyalur.
- 2.The Inspector of Police,
Thirumanur Police Station,
Ariyalur.
- 3.The Superintendent,
Central Prison, Tiruchirapalli.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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