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Crl.M.P.No.18429 of 2023 in Crl.A.No.1138 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.18429 of 2023 in
Crl.A.No.1138 of 2023

1.Anbarasan @ Anbu,
S/o.Rajendran

2.Ramkumar,
S/o.Muthuramalingam

3.Thangasamy,
S/o.Boominathan

... Petitioners

Vs.

STATE REP: BY,
The Inspector of Police,
J-7, Velacherry Police Station,
Chennai-600 042.
Crime No.184 of 2022.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence passed by the learned I Additional Sessions Judge, City Civil Court at Chennai in S.C.No.411 of 2022 dated 12-09-2023 and the petitioners/appellants 1 to 3 may be enlarged on bail pending disposal of the above appeal.

For Petitioners : Mr.K.Kannan

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)



ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence passed by the learned I Additional Sessions Judge, City Civil Court at Chennai, dated 12.09.2023 in S.C.No.411 of 2022.

2.The petitioners who are the accused in S.C.No.411 of 2022 faced trial for offence under Sections 148, 307 r/w 34 r/w 149 of IPC. On conclusion of trial, the trial Court convicted all the accused and sentenced A1 to A3 to undergo R.I for a period of one year and to pay a fine of Rs.2,000/-, in default to undergo S.I for three months for offence under Section 148 of IPC. For offence under Section 307 r/w 34 r/w 149 of IPC, A1 to A3 to undergo five years R.I and to pay a sum of Rs.10,000/- (Rupees ten thousand only), in default to undergo S.I for a period of one year. As regards A4 and A5 are concerned, they were convicted for offence under Section 148 of IPC and sentenced to undergo R.I for a period of three months and to pay a fine of Rs.1,000/-, in default to undergo S.I for one months. For offence under Section 307 r/w 34 r/w 149 of IPC, A4 and A5 sentenced to undergo R.I for six months and to pay a fine of Rs.5,000/-, in default to undergo S.I for two months.



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3.At the outset, the learned counsel for the petitioners submitted that the conviction of A4 and A5 were suspended by this Court *vide* order, dated 18.10.2023 in Crl.M.P.No.16672 of 2023 in Crl.A.No.1138 of 2023.

4.The case of the prosecution is that the petitioners and the defacto complainant are relatives and neighbours. PW1, PW2 & PW3 are the father, mother and daughter respectively. PW1 and PW2 were in vegetable vendors. Taking advantage of the absence of PW1 and PW2, the 3rd petitioner knocked the door of PW1's house and entered into the house and used abusive words against PW3 outraging her modesty. PW3 complained about the same to her parents. On 02.03.2022, PW2 questioned the 3rd petitioner and warned him not to commit such activities. A4, the mother of the 3rd petitioner instead of warning her son, had passed lucid comments questioning the modesty of PW3. Due to which, wordy quarrel arose. Thereafter, the 3rd petitioner entered into the house of PW1 with Aruval. Immediately, emergency Police 100 was called, they came to the scene of occurrence and both the groups were advised to desist from such act and to report on next day.



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5. On the same day night, at about 11.00 p.m., sensing some trouble, PW1 to PW3 not returned to their house and they were staying two streets away in their relative's house. PW1 was sitting outside and PW2 and PW3 were inside the house. At that time, the petitioners came in two bikes (MO1 & MO2). The 1st petitioner with iron rod and the 2nd & 3rd petitioners with wooden log attacked PW1 on his forehead, cheek near the left eye. The 2nd petitioner with wooden log attacked PW1 on his right knee and caused fracture. The 3rd petitioner with wooden log attacked PW1 on his head. PW2 and PW3 came out from the house and raised alarm. At that time, A4 and A5 said to have thrown stones on PW1 to PW3. On seeing the people were gathering, the accused fled away through their motor bikes (MO1 & MO2). One Selvam, PW1 brother's son called ambulance and in the ambulance, PW1 was taken to the Government Royapetah Hospital where PW8/Casualty Doctor examined PW1, issued Accident Register and admitted him in the ward and thereafter, wound certificate and discharge certificate issued. In the accident Register, the injuries sustained by PW1 recorded. On getting information from the hospital, PW9 visited the hospital, recorded the statement of PW1 as complaint, registered FIR on the next day, prepared



observation mahazar and rough sketch in presence of PW4, arrested the 1st & 2nd petitioners and recorded their confession statements in presence of PW5.

On recording the statements and on collection of the materials, charge sheet filed before the trial Court.

6.During trial, PW1 to PW9 examined and documents Exs.P1 to P18 marked on the side of the prosecution and five material objects produced. On the side of the defence, no witness examined and no documents marked. On conclusion of the trial, the trial Court convicted the petitioners as stated above.

7.The learned counsel for the petitioners submitted that PW1 was residing in his house along with his wife and daughter (PW2 and PW3). The 3rd petitioner is a neighbour to PW1. PW1 and PW2 are vegetable vendors. Finding PW3 was alone at home, the 3rd petitioner under intoxication used to tap the door of PW1's house and used to pass comments outraging the modesty of PW3. He further submitted that apart from PW1 to PW3, who hails from same family, no independent witness examined in this case. PW1 to PW3 are motivated witnesses having dispute with regard to taking of loan



and repayment, for which, a false complaint lodged against the petitioners. In this case, the ocular evidence is contrary to the medical evidence. PW1 along with others assaulted the petitioners, for which, a case in Crime No.183 of 2022 registered. As a counter to that case, the present case registered against the petitioners. PW1 admitted about the registration of FIR against him and the same is also confirmed by PW9, the Investigating Officer. In all fairness, the investigating officer ought to have investigated both the cases together following the Police Standing Orders 566(2). Added to it, no X-ray or medical records produced for the injuries sustained by PW1. In any event, the conviction under Section 307 of IPC is not sustainable. Hence, prays for suspension of sentence.

8.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that due to previous enmity on 02.04.2022, A1 to A5 unlawfully assemble in front of the house of one Ramalakshmi at Velacherry armed with deadly weapons and started attacking PW1 indiscriminately. Due to which PW1 sustained injuries on head, face, hands and legs. PW2 and PW3 are the wife and daughter of the PW1, rushed there to rescue him and they were also threatened. On seeing others coming to



rescue PW1, A1 to A5 fled in two wheeler leaving PW1 in a pool of blood.

Thereafter, the complaint lodged by the PW1 and the respondent Police registered a case in Crime No.184 of 2022 for offence under Sections 294(b), 341, 147, 148 and 307 of IPC. On conclusion of the investigation, charge sheet filed before the trial Court. He further submitted that A1 to A5 are close relatives who had grudge and enmity against PW1 to PW3. Finding that PW1 was alone, the petitioners armed with deadly weapons, attacked PW1 indiscriminately. PW2 and PW3 rushed to rescue and they were also threatened and kept away. The presence of the petitioners clearly spoken by all the three witnesses PW1 to PW3. Hence, prays for dismissal.

9.This Court considered the submissions and perused the materials available on record.

10.The petitioners and the defacto complainant are relatives and neighbours. In fact, A4 mother of the 3rd petitioner is a sister to PW1. There is some dispute with regard to money transaction. On the complaint of the defacto complainant, a case in Crime No.184 of 2022 registered. But the petitioners lodged the complaint against the defacto complainant, for which, a



case in Crime No.183 of 2022 registered, which is earlier in time. It is a case in counter, but the Investigating Officer failed to follow the Police Standing Order 566(2). from the evidence of PW8, it is seen that the injuries are not that grievous in nature. Further, no X-ray or any medical records produced in this case. In any event, the conviction of the petitioners needs to be reconsidered.

11.Accordingly, the Substantive Sentence of Imprisonment imposed on the A4 and A5 are suspended till the disposal of the appeal and they are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) each with two sureties, each for a like sum to the satisfaction of the trial Court.

12.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the criminal 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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13. Accordingly, this Miscellaneous Petition is ordered.

13.02.2024

Index: Yes/No

Internet: Yes/No

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To

1. The I Additional Sessions Court,
City Civil Court at Chennai,

2. The Inspector of Police,
J-7, Velacherry Police Station,
Chennai-600 042.

3. The Central Prison,
Puzhal.

4. The Public Prosecutor,
High Court, Madras.

Note: Issue Order Copy on 15.02.2024.



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M.NIRMAL KUMAR, J.

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