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Crl.M.P.Nos.18634 & 20003 of 2023

In both Crl.M.Ps:

For Petitioners : Mr.K.Thenrajan for
Mr.S.Krishna Moorthy
For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

COMMON ORDER

Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed by the learned XVI Additional District Sessions Judge at Chennai in S.C.Nos.412 of 2019 & 346 of 2023 *vide* judgment, dated 20.06.2023 & 21.06.2023.

2.For the sake of convenience and clarity, the petitioners are referred to as accused as per their rank in the charge sheet.

3.The conviction and sentence imposed on the petitioners/A1, A3 to A5 are as follows:

- For offence under Section 147 of IPC, A1, A3 & A4 were sentenced to undergo one year simple imprisonment.
- For offence under Section 299 of IPC, A1, A3 & A4 were sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.2,000/- each, in default to undergo simple imprisonment for one year each.
- For offence under Section 147 of IPC, A5 was sentenced to undergo one year simple imprisonment.
- For offence under Section 299 of IPC, A5 was sentenced to undergo ten



years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one year.

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4.The contention of the petitioners is that A1 to A5 are close relatives. It is projected that A5 was having illicit relationship with the deceased Arunkumar. On 19.06.2018, A5 is said to have called the deceased to come home. Later, she not responded and also not allowed the deceased to enter into the house. Enraged over the same, the deceased is said to have damaged the door, window, fridge and other articles in the house. The accused who were present there had questioned the deceased, assaulted him using knife and thrown chilli powder and done to death. The deceased was taken to the hospital where the death was confirmed. The case projected against the accused herein is that PW1 to PW3, who are mother, sister and sister's husband of the deceased are residing at Anna Nagar, Chennai, they had come to old Washermenpet to collect lease amount from one Ambal. At that time, they witnessed the occurrence.

5.The contention of the accused is that in this case, the said Ambal not examined as witness. The deceased was residing at 8th Alley of Model Line and the accused were residing at 6th Alley of Model Line. It was the deceased



who came into the house, caused damage and picked up a fight. In this case, admittedly, all the injuries are on the stomach with blunt open and no cut injuries found, which is confirmed by PW9, the Doctor and postmortem report. PW9 also confirmed that the death was due to the injuries sustained on the stomach. In this case, it is projected that A4 using iron rod, A3 and A5 using chilli powder, A1 and A2 using hands and legs, attacked the deceased. Assailing the above points, the learned counsel for the accused seeks suspension of sentence.

6.The learned Additional Public Prosecutor appearing for the respondent Police filed counter stating that the deceased Arunkumar and Jothy/A5 who is wife of A3 were having illegal relationship for the past three years and the same has been warned by both the family members. In spite of the same, they continued their relationship. On 19.06.2018, at about 10.00 p.m., A5 invited the deceased to her house, while the deceased had went to her house and asked to come her out. When A5 refused to come out, the deceased caused improper behaviour by assaulting the doors of A5. At that time, A1 who is the son & brother of A4 and A5, A2 relative of A5 and A4, were in the house. A5 had thrown chilli powder on the face of the deceased and A3



assaulted the deceased in his leg by using iron rod and thereafter, all the accused persons assaulted the deceased in their body by their legs, in which the deceased sustained injuries and later died. On the complaint (Ex.P1), a case was registered in Crime No.623 of 2018 for offence under Sections 302 IPC on 19.06.2018. During the course of investigation, the Inspector of Police went to the scene of occurrence, prepared Observation Mahazar (Ex.P5), Rough Sketch (Ex.P6) in presence of witnesses, examined the witnesses and recorded their statements, arrested the accused on 20.03.2018, recorded their confession statements and seized the material objects. On completion of investigation, charge sheet filed before the trial Court. Based on the evidence of the prosecution witnesses supported by the medical version and the documents, the trial Court rightly convicted the accused/petitioners herein as stated above. He further submitted that since A5 is woman, she is confined in the Special Prison for Women, Puzhal, Chennai.

7.Considering the submissions and on perusal of the materials, it is seen that in this case, the trial Court convicted A1 to A4 for offence under Sections 147 and 299 of IPC. The case against A5 split up in S.C.No.346 of 2023 and she was also convicted for offence under Sections 147 and 299 IPC.



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8. Section 299 IPC is only a definition clause, not a punishment Section.

The trial Court not imposed any punishment invoking the relevant Section. Since the punishment is ten years, it has to be seen whether it might have under Sections 304(i) or 304(ii) of IPC. Admittedly, in this case, MO1 is the iron rod which is normally available in all places, was used to attack the deceased by A4. The other two accused A1 & A2 said to have used their hands and legs to attack the deceased and two others a3 & A5 said to have thrown chilli powder. In the postmortem report, there is no mention about presence of chilli powder on the body of the deceased. The Doctor's (PW9) evidence is that the injury is only on the non-vital part of the body. In view of the same, this Court finds that the conviction and sentence of the accused needs to be reconsidered.

9. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners herein/A1, A3, A4, A5 is suspended till the disposal of the present appeals 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.



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10. Further, the petitioners herein/A1, A3, A4, A5 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 appeals 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 lieu of the date of their absence as directed by the Trial Court.

11 Accordingly, Criminal Miscellaneous Petitions are ordered.

15.03.2024

Index: Yes/No

Internet: Yes

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To

1. The XVI Additional District Sessions Judge,
Chennai.

M.NIRMAL KUMAR, J.



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2.The Inspector of Police,
H-1, Washermenpet Police Station,
Chennai-600 021.

3.The Women Central Prison,
Puzhal, Chennai.

4.The Central Prison,
Puzhal, Chennai.

5.The Public Prosecutor,
High Court, Madras.

Crl.M.P.Nos.18634 & 20003 of 2023
in Crl.A.Nos.1344 & 1637 of 2023

15.03.2024