



Crl.MP.Nos.18612 & 18050 of 2023
in Crl.A.Nos.1342 & 1288 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2024

Pronounced on : 10.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.Nos.18612 & 18050 of 2023

in

Crl.A.Nos.1342 & 1288 of 2023

1. Logeshwari @ Eswari

... Petitioner in

Crl.M.P.No.18612 of 2023/A2

2. A.Charles

... Petitioner in

Crl.M.P.No.18050 of 2023/A3

Vs.

State Rep. by
Inspector of Police,
F.2, Egmore Police Station,
Chennai – 600 008.
(Cr.No.222 of 2015).

... Respondent/Complainant
in both cases.

Common Prayer :- Criminal Miscellaneous Petition filed under Section 389
(1) of Cr.P.C. to suspend the sentence imposed by the learned 1st Additional
Sessions Judge, City Civil Court, Chennai dated 07.11.2023 in S.C.No.424



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of 2019 and enlarge the petitioners on bail pending disposal of the above appeals.

For Petitioner

in Crl.M.P.No.18612/23 : Mr.R.Vijayakumar

in Crl.M.P.No.18050/23 : Mr.R.John Sathyan, Sr. Advocate
for Mr.B.Harish

For Respondent : Mr.E.Raj Thilak
in both cases Additional Public Prosecutor

COMMON ORDER

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

These Criminal Miscellaneous Petitions have been filed to suspend the sentences imposed on the petitioners/A2 and A3, respectively, by the learned 1st Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.424 of 2019, by the judgment dated 07.11.2023, and enlarge them on bail pending disposal of the above Criminal Appeal.

2.The learned 1st Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.424 of 2019, convicted and sentenced the petitioners herein/A2 and A3, as follows:



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Accused No.	Offence under Section	Sentence imposed
A2	147 of IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.
	302 r/w 34 r/w 149 of IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for a period of two years.
	506 (ii) r/w 34 r/w 149 of IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of six months.
A3	148 of IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of three months.
	302 r/w 34 r/w 149 of IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for a period of three years.
	506 (ii) r/w 34 r/w 149 of IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of six months.
The sentences imposed are ordered to run concurrently.		

3.Challenging the above conviction and sentence, the petitioners, who are arrayed as A2 and A3, respectively, have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present miscellaneous petitions.



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4. The case of the prosecution is that election for the post of President of Egmore Advocates' Association, was conducted on 30.01.2015; that A1 one Michael who contested for the post of President apprehended that he would lose in the election; that on 28.01.2015, all the accused, 17 in number decided to cause death of any person, who might be elected as President; that on 31.01.2015 at about 01.20am, PW9-Chandan Babu was declared as President; that PW9 and his supporters started celebrating the victory; that on seeing the same, A1 to A17 pelted stones on the supporters of PW9, who ran helter-skelter; that one Stalin, a lawyer working as Junior under PW9 got trapped and all the accused surrounded him; that A1 and A2-Logeswari (petitioner in Crl.MP No.18612 of 2023) instigated the other accused; that A3-Charles (petitioner in Crl.MP No.18050 of 2023) cut the deceased with the knife on the back of his head; that A4 cut the deceased on his face and the other accused either caught hold of the deceased or attacked the deceased with stones.

5. (i) Mr.John Sathyan, learned Senior counsel appearing for the petitioner in Crl.M.P.No.18050 of 2023/A3 and Mr.R.Vijayakumar, learned



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counsel for the petitioner in Crl.M.P.No.18612 of 2023/A2, submitted that the trial Court found A5 to A17 not guilty of the offences. A1 and A4 died during the pendency of the trial, and the petitioners, who are A2 and A3, have been erroneously convicted without any basis when none of the witnesses supported the prosecution case.

(ii) The learned senior counsel further submitted that the trial Court had erroneously relied upon the statements of the witnesses under Section 161 of Cr.P.C., to hold that the witnesses were consistent in their version. The learned senior counsel also submitted that though six witnesses were examined by the prosecution as eyewitnesses i.e., PW7, PW9, PW10, PW15, PW19, and PW26, many of them turned hostile; that PW9 and PW10's version in the cross examination would show that they cannot be relied upon; and that hence, the judgment of conviction is palpably wrong.

6. The learned Additional Public Prosecutor, *per contra*, submitted that though it is true that some of the witnesses turned hostile, PW9 had supported the prosecution case, and there is no reason to disbelieve the



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version of PW9; that the submissions made by the learned counsels for the petitioners would amount to re-appreciating the evidence, which cannot be done while hearing the petitions for suspension of sentence and prayed for dismissal of the petitions.

7. We have carefully considered the rival submissions. The allegation against A2 is that she instigated the other accused to cause the death of the deceased. The allegation against A3 is that he cut the deceased on the backside of his head, which caused the death of the deceased. A5 to A17 were acquitted of all charges. PW7, PW9, PW10, PW15, PW19, and PW26 were examined by the prosecution as eyewitness to the occurrence.

8. PW7 turned hostile. PW9 and PW10 have spoken about the overt acts of the petitioners. PW15 would speak generally about the attack made by 20 persons including the petitioners, and he does not speak about any specific overt acts of either A2 or A3. PW19, who was working in the Armed Reserved Police Force Egmore, speaks about the presence of A2 at the scene of the occurrence and does not know whether the other accused



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were present at the scene of the occurrence. PW26 is unable to identify the accused and hence, was treated as hostile. Thus, except for PW9 and PW10, none of the other witnesses are of any use to the prosecution. However, we find that PW9 stated in the cross examination that when all the lawyers ran helter-skelter, due to a scuffle, he also ran along with them; that he did not know what happened to the deceased; and that he came to know as to what happened to the deceased from others. From the above evidence, the version of PW9 that he witnessed the occurrence is highly doubtful. Further, PW10 in the cross examination had stated that the deceased was not injured due to the overt act of A3. None of the witnesses have attributed any specific overt act to A2.

9. Admittedly, it appears to be a case of group clash, and the incident occurred in a free-for-all situation. PW9, had a grudge against the accused in this case, and the possibility of false implication cannot be ruled out. Further, we find that the trial Court referred to the contents of the 161 statements to corroborate the version of the witnesses.



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10. Considering all the above facts, we are *prima facie* convinced that the petitioners have a fair chance of success in the appeal and have made out a case for suspension of sentence.

11. Accordingly, these criminal miscellaneous petitions stand **allowed**, and the sentence of imprisonment imposed on the petitioners (A2 and A3) is suspended on the following conditions:

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned 1st Additional Sessions Judge, City Civil Court, Chennai;
- (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 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



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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.)
10.01.2024

ars

Index : Yes / No

Speaking/Non-Speaking order

Neutral Citation: Yes/No

Note to office: Issue order copy today (10.01.2024)

Upload the order copy forthwith.

To

- 1.The 1st Additional Sessions Judge, City Civil Court,
Chennai
- 2.The Inspector of Police,
F.2, Egmore Police Station,
Chennai – 600 008.
- 3.The Superintendent,
Central Prison,
Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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

ars/dk

Pre-delivery common order in
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10.01.2024