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*Crl.M.P.No.19366 of 2023
in Crl.A.No.1515 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.19366 of 2023
in
Crl.A.No.1515 of 2023

R.Nagarajan @ Nagaraj

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Valavanoor Police Station,
Villupuram District.
[Crime No.535 of 2020]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) r/w. 386 of Cr.P.C to suspend the sentence imposed upon the petitioner/appellant herein by the Principal Sessions Judge, Villupuram in S.C.No.265 of 2020 dated 02.11.2023 and release the petitioner/appellant herein on bail pending disposal of the above appeal.

For Petitioner : Mr.C.Iyyapparaj

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

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Principal Sessions Judge, Villupuram by judgment dated 02.11.2023 made in S.C.No.265 of 2020 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/A1 was convicted by the Trial Court in S.C.No.265 of 2020 and sentenced to undergo ten years simple imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months simple imprisonment for the offences under 304(ii) IPC. Against which, the present appeal is filed along with suspension of sentence.

3.The case of the prosecution is that the deceased Sundararajan was residing at Mudhaliarkuppam, Kumalam Village, Vikravandi Taluk along with his son Sivakumar/P.W.2. In order to construct a house, they took river sand from Bumby river in a bullock cart, which was prevented by A1 whose land is situated near the river bed complaining that transportation of river sand would affect his agricultural field. On 17.05.2020 at about



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4.30 p.m., the deceased Sundararajan was speaking with his sons Palani and Sivakumar, daughter-in-law Vinothini/P.W.1, wife Manoranjitham and grandson Sridhar/P.W.3 in front of his house, at that time, the petitioner/A1 along with his two sons, A2 and A3 came there, abused the said Sundararajan and P.W.2 with filthy language. A2 and A3 attacked Sundararajan with their hands and legs and pushed him down near the water tank, when the same was prevented by P.W.2 they kicked him and assaulted. A1 took a wooden reaper with an intention to kill the said Sundararajan and attacked him on the left side of his head causing grievous injuries. The said Sundararajan fell down and the accused persons threatened others and thereafter, left the place. Since the said Sundararajan was seriously injured, he was taken to Mundiambakkam Government Medical College and Hospital and thereafter, he was referred to Jipmer Hospital, Pondicherry for further treatment. On 21.05.2020 at about 12.40 p.m., due to Cranio Cerebral injuries and its impact, the said Sundararajan died. Therefore, the petitioner/A1 was charged for the offence under Sections 294(b), 302 and 506(ii) IPC and his sons/A2 and A3 were charged for the offence under Sections 294(b), 323, 352, 506(ii), 302 r/w. 34 IPC. On completion of



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investigation, charge sheet filed before the Trial Court.

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4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.10 examined, Ex.P1 to Ex.P26 and M.O.1 marked. On the side of the petitioner/A1, D.W.1 to D.W.3 examined and Ex.D1 to Ex.D4 marked. On conclusion of the trial, the Trial Court convicted the petitioner/A1 as stated above. The two sons of the petitioners viz., A2 and A3 were convicted for the offence under Section 323 of IPC and directed to pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment.

5.The contention of the learned counsel for the petitioner is that P.W.2, son of the deceased is a habitual offender indulge in smuggling of sand from the river bed which was objected by the petitioner and his two sons. Further, the petitioner owns a land near the river bed and the illicit mining of river sand would affect the agricultural field of the petitioner and its environment. There was also a doubt on the petitioner that he is the person who is informing the revenue and Police authorities about the illicit mining of river sand. Hence, the relationship between them is not cordial.



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This being so, on 17.05.2020 P.W.2 again indulged in smuggling of river sand which was opposed. The petitioner/A1 and his two sons were assaulted by the deceased Sundararajn and his son Sivakumar/P.W.2, they sustained injuries and thereafter, they went to Valavanoor Government Hospital where D.W.3/Doctor examined the petitioner and issued Accident Register/EX.D3 and Ex.D4. The petitioner's son A2 lodged a complaint to the respondent police and a case in Crime No.534 of 2020 for the offence under Sections 294(b), 324 and 506(ii) IPC registered, in which the deceased Sundararajan and his son Sivakumar/P.W.2 are the accused. FIR in Crime No.534 of 2020 is marked as Ex.D1. He would submit that as regards the case in Crime No.534 of 2020, the respondent police ought to have followed Police Standing Order 588 which is now renumbered as 566A and took up both the investigation together to find out the aggressor and reason for the offence. In this case conveniently the respondent police recorded the time of occurrence in the FIR in Crime No.534 of 2020 as 4.20 p.m. and in Crime No.535 of 2020, recorded the time of occurrence as 4.30 p.m. to show that it is a two different occurrence, but it is not so, it is an attack and counter attack arises out of same cause of action. He further submitted that in this



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case the prosecution projected P.W.1, P.W.2, P.W.3 and P.W.6 as eye witnesses. P.W.1 is the daughter-in-law, P.W.2 is the son, P.W.3 is the grandson of the deceased, P.W.6 is a close relative and no independent witnesses examined in this case. On the other hand, on the side of the petitioner/accused, D.W.1 to D.W.3 examined, D.W.1 is the Record Clerk to prove the fact that correction was made in Accident Number in Mundiambakkam Government Hospital, A3 examined himself as D.W.2 and D.W.3 is the Doctor who treated the petitioner in Valavanur Government Hospital. These facts have not been considered by the Trial Court and the Trial Court glossed over the same and gave a moral conviction.

6.The learned Government Advocate [Crl. Side] submits that on the complaint of A2 in this case Crime No.534 of 2020 registered. He would submit that both the cases arises out of same cause of action and for all reasons, the Investigating Officer ought to have conducted investigation in both the cases following the Police Standing Order. He would further submit that the occurrence took place on 17.05.2020 and the said



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Sundararajan died on 21.05.2020 after a period of four days. M.O.1 is only a wooden reaper and it is a blunt object. There have been scuffle, attack and counter attack, both the parties were injured and the petitioner had proved the treatment taken by him by examining D.W.3/Doctor in Government Hospital, Valavanur, who issued Accident Register/Ex.D3 and Ex.D4. This alone would not absolve the petitioner from commission of offence. In this case, the prosecution examined P.W.1 to P.W.10. P.W.1, P.W.2, P.W.3 and P.W.6 are the eye witnesses who clearly state about the overt act of each of the accused. P.W.4 and P.W.5 clearly state about the deceased taking treatment and the reason for the death of the deceased. In this case, the presence of the petitioner in the scene of occurrence and attacking the deceased is not disputed, it is only the intention and knowledge to be seen. Though the petitioner was charged for the offence under Section 302 Ipc, the Trial Court taking into consideration of over all facts of the case, convicted the petitioner under Section 304(ii) IPC. Hence, prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials, it



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is seen that on the side of the petitioner/A1, a case in Crime No.534 of 2020 registered against the deceased and his son/P.W.2. In this case, the occurrence took place on 17.05.2020 and the death of the deceased occurred on 21.05.2020, hence it is not an instant and spontaneous death. The weapon used is only a wooden reaper/M.O.1. The respondent police ought to have conducted investigation in both the cases together following the Police Standing Order which has not been followed. Further, the petitioner/A1 took treatment at Government Hospital, Valavanur is proved and the injuries seems to be serious in nature. These factors have not been considered by the Trial Court. In view of the same, the conviction of the petitioner needs re-look and re-consideration. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8.Accordingly, 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



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a like sum to the satisfaction of the learned Principal Sessions Judge,
Villupuram.

9.Further, the petitioner 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 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.

10.Accordingly, this Miscellaneous Petition is ordered.

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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Valavanoor Police Station,
Villupuram District..
- 2.The Principal Sessions Judge,
Villupuram.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

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