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CrLMP.No.19666/2023 in CrL.A.No.1321/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2024

Pronounced on : 22.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrLMP.No.19666/2023 in CrL.A.No.1321/2023

1. Murugesan

2. Sakthi Ganesh,

3. Karthik

...Petitioners/Accused (A-2 to A-4)

Versus

State by:

The Inspector of Police,

Tiruppur North Police Station,

Tiruppur.

(Cr.No.2377 of 2020)

...Respondent/Complainant

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the conviction and sentence imposed on the petitioners through judgment dated 21.09.2022 in S.C.No.03 of 2022 by the learned Principal



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Sessions Judge, Tiruppur and release them on bail pending disposal of the above criminal appeal in C.A.No. 1321 of 2023 pending on the file of this Court.

For Petitioners : Mr.C.Arunkumar
for Mr.M.S.Charles

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioners/A2 to A4, respectively, by the learned Principal Sessions Judge, Tiruppur, in S.C.No.3 of 2022, by the judgment dated 21.09.2022, and enlarge them on bail pending disposal of the above Criminal Appeal.

2. The learned Principal Sessions Judge, Tiruppur, in S.C.No.3 of 2022, convicted and sentenced the petitioners herein/A2 to A4, as follows:



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Accused No.	Offence under Section	Sentence imposed
A2	302 r/w 34 of IPC	To undergo Life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo further rigorous imprisonment for a period of three months.
	449 of IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of three months.
A3	302 r/w 34 of IPC	To undergo Life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo further rigorous imprisonment for a period of three months.
	449 of IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of three months.
A4	302 r/w 34 of IPC	To undergo Life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo further rigorous imprisonment for a period of three months.
	449 of IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of three months.
The sentences imposed are ordered to run concurrently.		

3. Challenging the above conviction and sentence, the petitioners, who are arrayed as A2 to A4, respectively, have filed the above Criminal Appeal and they seek suspension of sentence and bail in the present miscellaneous petition.



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4. Heard the learned counsel for the petitioners [A2 to A4] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

5.(i) The case of the prosecution is that A2 to A4 were close friends; that the deceased was working as a load man and a night watchman in a company by the name Thugil Impex Company; that A1 was working as a helper in the said Company and was allotted a room where he had kept his belongings; that two months before the occurrence A1 took an advance of Rs.7,000/- (Rupees Seven Thousand only) from the Company and did not return to work; that realising that A1 would not be permitted to enter the company, he decided to take it surreptitiously; that on 14.11.2020, during night hours A1 to A4 came in a TATA ACE van bearing Reg. No. TN 65 M 4664, belonging to A2, to trespass into the Company by the side gate for taking away his belongings without the knowledge of the employer; that the deceased who was then working as a night watchman refused to open the gate and upset over the same, A2 to A4 caught hold of the deceased and A1



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beat the deceased on his chest, hands and legs with a cricket bat, as a result of which, deceased died; that A1 to A4, in order to screen the offence took the body of the deceased kept the body in a room and locked the door from outside.

6. Mr.C.Arunkumar, the learned counsel for the petitioners, submitted that the case was initially registered under Section 174 Cr.P.C, subsequently altered to Section 302 of the Indian Penal Code, on 16.11.2020; that there is no eyewitness to the occurrence; that except for P.W.2, who said to have seen the accused loading articles in a TATA ACE van; that the petitioners were sought to be identified by CCTV footage; that none of the witnesses had identified the accused from the CCTV footage except for identifying A1, who was known to P.W.3.

7. Per contra, Mr.E.Raj Thilak, the learned Additional Public Prosecutor for the respondent/State, submitted that A1 was identified by P.W.3 from the CCTV footage, and from the other circumstances, the prosecution has proved its case beyond reasonable doubt.



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8. We have heard the rival submissions on either side and perused the records.

9. P.W.3 had identified A1 from the CCTV footage. However, he was unable to identify the petitioners who were arrayed as A2 to A4. Further, P.W.18 the officer from the Forensic Science Department has stated that though the assault on the deceased was recorded on CCTV, the faces of the persons could not be identified since the quality of the footage was poor. P.W.2's evidence that he saw the petitioner's (A2 to A4) loading the articles in a van also appears to be doubtful. Though the first accused also filed a petition for Suspension of Sentence in CrL.M.P.No.19551 of 2023 in CrL.A.No.1095 of 2023, since we were not inclined to suspend the sentence, the learned counsel appearing for the petitioner had withdrawn the said petition. However, we find that A2 to A4/the petitioners stand on a different footing, and their involvement in the offence is highly doubtful.

10. Considering the fact that the petitioners(A2 to A4) are in custody from 21.09.2022 and that the appeal is not likely to be taken up in the near



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future, we are inclined to grant the relief of suspension of sentence to the petitioners (A2 to A4).

11. Accordingly, this criminal miscellaneous petition stands **allowed**, the sentence of imprisonment is **suspended**, and the sentences imposed on the petitioners (A2 to A4) are 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 Principal Sessions Judge Tiruppur;
- (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 arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other



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day in lieu of the date of their absence, as directed by the trial Court.

[M.S.R.,J.] [S.M.,J.]
22.01.2024

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Issue order copy by 24.01.2024
Upload the order copy forthwith.

Internet: Yes



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To

- 1.The Principal Sessions Judge,
Tiruppur.
- 2.The Inspector of Police,
Tiruppur North Police Station,
Tiruppur.
- 3.The Superintendent of Prisons,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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Pre-delivery order in
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in
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22.01.2024