



Crl.MP(MD)Nos.7031 and 7032 of 2024

Crl.MP(MD)No.7031 of 2024 in Crl.A(MD)No.589 of 2024
and
Crl.M(MD)No.7032 of 2024 in Crl.A(MD)No.590 of 2024

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G.ILANGOVA, J

These Criminal Miscellaneous Petitions are filed to suspend the sentence imposed by the Additional District and Sessions Judge, Periyakulam, dated 28/06/2024 in SC No.83 of 2021 and enlarge the petitioners on bail, pending disposal of the above said Criminal Appeals.

2.The facts in brief:-

A2 namely H.Hakkiam was running a mutton stall near Thamaraikulam College Road, Theni. A1-A.Jafar Sathik was working under him. The deceased Syed Mohammed put up a mutton stall near the mutton stall of A2 on the eve of Deeapavali festival. Because of that, the business of A2 affected. So there was enmity between them on the business motive. On 15/11/2020 at about 4.00 pm, both the accused assaulted one Sulaiman, who is the father-in-law of the deceased Syed Mohamed near the market area. In furtherance of the above said incident, at about 05.30 pm, the deceased Syed Mohammed along with his relatives Kadhar Meeran Mydeen and Mulkar Sathik went to the house of A1 and questioned him about the assault. At that time, A2 also came to that place. He instigated A1 to kill the deceased Syed Mohammed. A1 with an intention to kill the Syed Mohammed beat him



forcibly with his hands on cheat and head and pushed him down. A1 stamped him on his chest. The deceased was taken to the Government Hospital, Periyakulam, but he died. On the basis of the complaint given by the complainant, the case was registered. After completing the investigation, final report was filed, charge sheeting A1 for the offences under sections 323 and 302 IPC and A2 was charge sheeted for the offences under sections 323 and 302 r/w 114 IPC.

3.The case was tried by the Additional District and Sessions Judge, Periyakulam, in SC No.83 of 2021. After committal process was over, the following charges were made:-

Accused No.1 - under sections 323 and 302 IPC
Accused No.2 - under sections 323 and 302 r/w 114 IPC

4.On the side of the prosecution, 16 witnesses were examined and 12 documents marked. 3 material objections were exhibited. On the side of the accused, 3 documents were marked.

5.At the conclusion of the trial process, the trial court found A1 guilty of the offence under sections 323 IPC and convicted and sentenced to undergo 6 months simple imprisonment and to pay a fine of Rs.1,000/- (Rupees One thousand only) in default, he shall undergo simple imprisonment for a period of one month; and also A1 found



guilty for the offence under section 304 Part II IPC and convicted and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten thousand only) in default, he shall undergo simple imprisonment for a period of six months. A2 found guilty of the offence under section 304 Part II r/w section 114 IPC and convicted and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten thousand only) in default, he shall undergo simple imprisonment for a period of six months. He was acquitted from the charge under section 323 IPC.

6.Against which, these appeals are preferred by the appellants. Pending appeals, two separate miscellaneous petitions were taken out by the petitioners seeking suspension of sentence.

7.Heard both sides.

8.The learned Senior counsel appearing for the petitioners would submit that even as per the case of the prosecution, there was no big motive between the deceased and the accused; It is the specific case of the prosecution that because of putting up a mutton stall, issue arose between A2 and the deceased; The father-in-law of the deceased was assaulted by the accused; There was no



complaint by the father-in-law in the previous occasion;
The deceased along with his relatives went to the house of
A1 to question about the alleged assault. So according to
him, the deceased and his relatives were the aggressors. It
is also pointed out by him that no case is registered
against the deceased. Mere pushing down the deceased will
not amount to intention to cause death. It is also further
submitted that even in the FIR, it has been mentioned that
three persons alleged to have assaulted the deceased, but
only two persons are facing the trial. Who is the other
person is not known.

9.The learned Additional Public Prosecutor would
submit that there is sufficient material to show the
previous enmity between the accused and the deceased over
the business loss. On the particular day, with an intention
to kill the deceased only, at the instance of A2, A1
assaulted him.

10.Per contra, the learned Senior counsel appearing
for the petitioners would submit that the postmortem report
does indicate that the deceased consumed alcohol exceeding
the permit limit. According to him, because of consuming
alcohol, he died, for which the appellants may not be held
responsible.



11.The learned Senior counsel appearing for the petitioners would further submit that A2 is suffering from health ailments and undergoing continuous dialysis, even surgery was taken. He was directed to be produced before this court in person through VC. He was also produced. But the learned Senior counsel went to argue the mater on merits. So he was heard.

12.Now we will straightaway go to the evidence of on record to see whether any ground is made out by the petitioners for suspension.

13.From the evidence on record, it is established that A2 and the deceased were in inimical terms regarding putting up of the mutton stall. On the particular day of the occurrence to question the assault made by the accused to the father-in-law of the deceased, it appears that the deceased and others went to A1's house. They cannot be construed as aggressors. Non-filing of the complaint by the father-in-law of the deceased indicates that there was no big enmity between them. Questioning the assault made by the accused by the deceased cannot be construed as aggressive act.

14.It is also seen that for 20 minuets the deceased and others in the place of the occurrence. There is



sufficient circumstantial evidence to show that something had happened uncontrollable. A1 pushed the deceased down.

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15.Postmortem report also indicates that there was no external injuries, but there was contusion injuries in the head region. The Doctor, who examined the deceased has stated that there was contusion on the head region. There is another contusion on the temporal region. Haemorrhage was found in the brain. Another contusion was found near the right side brain region. Another contusion on the left chest region.

16.Reading of the evidence of the Doctor clearly shows that several contusions occurred in the head region and chest also. Mere pushing down will not cause four contusions.

17.*Prima facie*, it is seen that he was assaulted with hands by A1. In such circumstances, whether the offence under section 304 Part II IPC will be attracted is a matter for consideration by the court. But the involvement of A2 to instigate A1 to cause death is remote.

18.Whether he was present in the place of occurrence is also doubtful. So, A2 is entitled for



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suspension of sentence considering the limited overtact attributed against him. So far as A1 is concerned, I find no reason to suspend the sentence at this stage.

19.In the result, Crl.MP(MD)No.7031 of 2014 in Crl.A(MD)No.587 of 2024 filed by A2-H.Hakkim is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and he is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the Additional District and Sessions Judge, Periyakulam, and on further condition that he shall appear before the said Court once in a week at 10.30 am pending criminal appeal. So far as Crl.MP(MD)No.7032 of 2024 in Crl.A(MD)No.590 of 2024 filed by A1-A.Jafar Sathi is concerned, it is dismissed.

07/08/2024

Index : Yes/No
Internet: Yes/No

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To,

- 1.The Additional District and Sessions Judge,
Periyakulam, Theni District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Superintendent,
Central Prison,
Madurai.

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G.ILANGOVAN, J.,



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