



Crl.M.P(MD)No.4405 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Eighth day of June Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA
and
The Hon`ble Mr.Justice K. RAJASEKAR

Crl.M.P.(MD) Nos.10843 of 2023
and
Crl.M.P(MD)No.4405 of 2024
in
Crl.A.(MD) Nos.619 & 630 of 2023

SENTHAMARAI @ SENTHAMARAI SELVI

... PETITIONER/ APPELLANT
IN CRL MP(MD)No.10843/ 2023

KANNAN

...PETITIONER/ APPELLANT
IN CRL MP(MD)NO.4405/ 2024

Vs

THE INSPECTOR OF POLICE
SOOLAKKARAI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.323/16.

... RESPONDENT/RESPONDENT
IN BOTH CASES

Prayer in Crl.M.P.(MD) Nos.10843 of 2023:

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the operation and execution of sentence imposed by the Additional District and Sessions Judge, Virudhunagar SC 190/2017 dated 12.07.2023 till the disposal of appeal and may be pleased to enlarge the above Petitioner / Appellant on bail till the disposal of pending appeal.



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Prayer in CRL A(MD)No.619 of 2023:

To call for records relating to the impugned judgment and conviction passed by the Learned Additional District and Sessions Judge, Virudhunagar in S.C.No.190/2017 dated 02.06.2023 and set aside the same and to acquit the Appellant/Accused No.3 from the charges framed against her and thus to render justice.

Prayer in CRL MP(MD). 4405/ 2024 :

To suspend the operation and execution of sentence imposed by the Additional District and Sessions Judge, Virudhunagar SC No.190/2017 dated 2/8/2023 till the disposal of appeal and may be pleased to enlarge the above Petitioner/Appellant on bail.

Prayer in Crl.A.(MD) No. 630 of 2023:

To call for records relating to the impugned judgment and conviction passed by the learned Additional District and Sessions Judge, Virudhunagar in S.C.No.190/2017 dated 02.06.2023 and set aside the same and to acquit the Appellant/Accused No.1 from the charges framed against her.

Common Order : These Criminal Miscellaneous petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S. MARIAPPAN.G, Advocate for the petitioner in both cases and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor, on behalf of the Respondent in both cases, the court made the following order:-

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The case of the prosecution is as follows:

- (i) P.W.1 Latha and husband P.W.3 Ramanujam are residing in Periyavallikulam. P.W.4 Priya is the daughter of P.W.1 and P.W.3. Injured Babiymmal (Listed witness number 2) and Alagarsamy are the parents of



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P.W.1. The first accused is the brother of P.W.1 and they have three sisters namely P.W.23 Krishnaveni, listed witness number 13 Sudha and listed witness number 14 Nagajothi. The third accused Senthamarai is the wife of the first accused and second accused Subburaj is the brother of the third accused. Alagarsamy is haveing agricultural lands and house in his native place in Alagapuri. While Babiyammal and Alagarsamy were residing in Alagapuri. The accused Nos.1 and 3 drove them out from their house. The first accused did not provide food to his parents.

(ii) On 03.11.2014 a complaint was given by Babiyammal in Soolakkarai Police Station and P.W.16 Sub-Inspector of Police Mr.Karthik Selvam registered a case in Cr.No.324/2014 for the offences punishable under Sections 294(b), 341, 506(i) IPC and Section 24 of Maintenance and Welfare of Parents and Senior Citizens Act. Ex.P16 is the First Information Report. On 07.05.2007 when Babiyammal and Alagarsamy were in the house of P.W.1 in Alagapuri, the second accused and others cut Babiyammal on her leg and caused injuries on her head. Therefore, on the complaint of Babiyammal, a case was registered in Soolakkarai Police Station by P.W.21 Sub-Inspector of Police Mrs.Anitha Arockiasmy. ExP.20 is the First Information Report.



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(iii) A suit for partition was filed against the first accused by Alagarsamy and others as O.S.No.274/2006 before District Munsif Court, Virudhunagar. That suit was decreed and first accused filed appeal in A.S.No.17/2009 before the Subordinate Court, Virudhunagar which was dismissed. Ex.P29 is the copy of judgment. Even after that all the properties are in possession of first and third accused. So, for the last 10 years, Alagarsamy and Babiymmal were residing with P.W.1. Alagarsamy executed Ex.P15 Gift Deed with respect to survey number 81/1 in Alagapuri Village in favour of his wife Babiymmal. Then, Babiymmal gifted that property in favour of P.W.1 Latha.

(iv) On 10.12.2016 Alagarsamy fell ill and hence, P.W.1 took him to Government Hospital, Virudhunagar. Alagarsamy expressed his desire to be in his native village during his last days. So, P.W.1 along with her sister P.W.23 Krishnaveni and P.W.3 Ramanujam decided to go and stay in the land in survey number 81/1 and to settle her parents in the shed available in the land.

(v) On 18.12.2016 at about 10.00 a.m., P.W.1 Latha, P.W.23 Krishnaveni along with Alagarsamy and Babiymmal went to the scene of occurrence in an auto-rickshaw. Then, P.W.1 and P.W.3 went to their house at Periavallikulam to prepare food for them. On that day, at 03.00 p.m., P.W.1 along with P.W.8



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Pitchai @ Alagiri took house-hold articles and utensils in Tata Ace vehicle bearing number TN-69-S-4633 of deceased Balaji to the scene of occurrence. P.W.3 along with P.W.7 Karuppan followed them in motor-cycle. While they were in the farm land at about 4.00 p.m, the accused Nos.1 & 3 with M.O.2 and M.O.3 sickles and second accused with M.O.1 crowbar went to the firm. They abused P.W.1 Babiyammal and Alagarsamy and asked why they had gone to the land. Then, the second accused Subburaj with M.O.1 crowbar beat Babiyammal on her left shoulder and beat Alagarsamy on his right knee. While P.W.1 interfered, second accused with crowbar beat on her both shoulders.

(vi) The accused No.1 stating that P.W.1 is the cause for everything, with sickle cut on her left knee. Seeing this, third accused also with sickle cut on the left side head of P.W.1. While deceased Balaji interfered. The second accused abused him and with crowbar gave a blow on the front side of head of deceased Balaji. Deceased tried to escape and he struck on the corn plants and fell down. When he attempted to get up, the first accused with M.O.1 sickle cut him twice on the back of his head. The third accused Senthamarai also cut the deceased on the back side of his head and said Balaji died at the spot. Seeing this Babiyammal, P.W.23 Krishnaveni, P.W.3 Ramanujam, P.W.7 Karuppan,



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P.W.8 Pitchai @ Alagiri shouted and the accused Nos.1 to 3 left the scene of occurrence leaving M.O.1 crowbar there. P.W.11 Ravi, who was residing nearby house saw the accused going to the place of occurrence and returned with blood-stained weapons.

(vii) Thereafter, P.W.19 took up the investigation and examined the witnesses and handed over the file to P.W.22, who had filed the final report in P.R.C.No.13 of 2017, before the learned Judicial Magistrate No.2, Virudhunagar, under Sections 294(b), 324 (4 counts), 326, 302, 302 r/w 34 IPC against the accused.

(viii) On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session, Virudhunagar, in S.C.No.190 of 2017 and was made over to the Additional District and Sessions Judge, Virudhunagar, for trial.

(ix) The Trial Court, after hearing the accused, framed charge against him, as detailed below:



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Charge	Penal Provisions
1.	294(b) IPC against all the accused
2.	324(3 counts) IPC against the second accused
3.	326 IPC against the 1 & 3 accused
4.	302 IPC against all the accused

(x) When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 24 witnesses and marked 30 exhibits and 14 material objects. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused and marked one document Ex.D1.

(xi) By judgment and order dated 02.06.2023, the Trial Court found the second accused not guilty for the offence under Section 294(b), 324(1 count) IPC and found guilty for the offences punishable under Section 324(2 counts) IPC and 302 IPC, third accused Senthamarai @ Senthamari Selvi not found guilty for the offences punishable under Section 302 IPC and 324 IPC instead of under Section 326 IPC, and convicted and sentenced him, as detailed below:-



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Section of Law	Sentence of imprisonment	Fine amount
302 IPC for the 1st accused Kannan	To undergo life imprisonment	Rs.50,000/- in default to undergo one year rigorous imprisonment.
324 IPC 1st accused	To undergo two years rigorous imprisonment	-
324 (2 counts) IPC 2nd accused	To undergo two years rigorous imprisonment	
302 IPC 2nd accused	To undergo life imprisonment	Rs.50,000/- in default to undergo one year rigorous imprisonment
324 IPC 3rd accused	To undergo two years rigorous imprisonment	
302 IPC 3rd accused	To undergo life imprisonment	Rs.50,000/- in default to undergo one year rigorous imprisonment

The sentences imposed on the accused were ordered to run concurrently.

2. Challenging the said conviction and sentence, the accused Nos.1 & 3 have filed appeals in Crl.A.(MD) No. 619 of 2023 and 630 of 2023 and pending the appeal, they have filed the above miscellaneous petitions seeking to suspend the sentence



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imposed on them.

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3. Mr.G.Mariappan, learned counsel appearing for the appellant would submit that the trial Court has failed to taking into consideration the doubts regarding the genesis of the FIR. As per the prosecution, even prior to the registration of the case, P.W.13, the police constable is said to have gone to the place of occurrence and only thereafter the body was shifted from the place of occurrence. He would further submit that the third accused is the wife of the first accused and she has also been falsely implicated in this case on account of previous enmity and there was no intention on the part of the accused to commit murder of the deceased. Since he had intervened between first accused and his parents, due to sudden provocation the occurrence had happened.

4. The learned counsel for the petitioner further submitted that the accused Nos.1 & 3 are the husband and wife and both of them are inside the jail and their children are studying and due to the absence of their parents, the first son discontinued his studies for taking care of his brother. Further, there are several arguable points in favour of the petitioners, the likelihood of the appeal being taken up for final hearing in the near future is also not possible and therefore, he prayed for



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suspension of sentence.

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5. The learned counsel for the petitioner would submit that in respect of the accused Kannan, he is not pressing the application in Crl.M.P(MD)No.4405 of 2024 and seeks premission of this Court to withdraw the said application. In view of the above, Crl.M.P(MD)No.4405 of 2024 is dismissed as withdrawn.

6. The respondent has filed counter.

7. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent would submit that the first accused had property dispute with his parents and his sister P.W.1. On account of their father settling the property in favour of P.W.1, there were continuous disputes. While so, on 18.12.2016 when P.W.1 along with her parents had gone to the place of occurrence, the first accused along with second accused, who is the brother-in-law of the first accused and the third accused, who is the wife of the first accused had brutally assaulted her parents, at the time the deceased had intervened and the accused stating that the deceased was responsible for the disputes had indiscriminately assaulted him with aruval, resulting in his death. P.W.1 and P.W.3 have spoken about the incident. P.W.1 injured witness is



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non other than the sister of the first accused and the trial court had rightly found the accused guilty for the offences.

8. Heard the learned counsel on either side and carefully perused the materials available on record.

9. The accused are husband and wife. On going through the records, we find that there was dispute between the accused and parents and the sister of the first accused. The incident said to have happened while the deceased had intervened in the dispute. So far as first accused is concerned, we feel it is not a fit case for grant of bail and that petition has also been withdrawn. Further, it is stated that since A1 and A3 are in custody, their first son has discontinued his studies. Further taking into consideration the overtact attributed on her, we feel that it is a fit case for grant of bail to the petitioner/3rd accused alone.

10. Accordingly, the criminal miscellaneous petition in Crl.M.P(MD)No.10843 of 2023 is allowed and the substantive sentence of imprisonment alone imposed on the petitioner herein is suspended since she is lady, subject to the following conditions:

<https://www.mhc.tn.gov.in/judis>



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- i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Virudhunagar.
- ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.
- iii. The petitioner shall report before the Additional District and Sessions Judge, Virudhunagar in the first working day of every English Calendar month at 10.30 a.m. until further orders.
- iv. It is made clear that the petitioner shall not enter into the jurisdictional limits of the respondent Police Station until further orders.

sd/-
28/06/2024

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02/07/2024
Sub-Assistant Registrar (W)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AM



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TO
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- 1.THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, VIRUDHUNAGAR.
- 2.THE SUPERINTENDENT,
WOMEN CENTRAL PRISON, MADURAI.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4.THE INSPECTOR OF POLICE
SOOLAKKARAI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.G.MARIAPPAN, Advocate (SR-7110[I] dated 28/06/2024)

ORDER
IN
Crl.M.P.(MD) Nos.10843 of 2023
and
Crl.M.P(MD)No.4405 of 2024
in
Crl.A.(MD) Nos.619 & 630 of 2023
Date :28/06/2024

RK (02/07/2024) 13P / 8C

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