



Crl.M.P.(MD).No.11686 of 2023

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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).No.11686 of 2023
in
Crl.A.(MD).No.719 of 2023

1 RENGARAJ

2 RAJAGOPAL

...APPELLANTS/ ACCUSED NO.1&2

Vs

THE INSPECTOR OF POLICE
SRIRANGAM POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
CRIME NO.443 OF 2018.

... RESPONDENT/COMPLAINANT

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 Sentence imposed on the petitioners in S.C.No.133 of 2019 dated 24.01.2023 on the file of the II Additional District and Sessions Judge, Trichy Enlarge the petitioners/ Accused No.1 and 2 on bail pending disposal of the above appeal.

PRAYER IN Crl.A.(MD).No.719 of 2023:

To call for the records relating to the order in SC.No.133 of 2019 dated 24.01.2023 on the file of II Additional District and Sessions Judge, Tiruchirapalli, set aside the Judgment and acquit the Appellants/ Accused 1 & 2 herein.



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Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.MOHAMED HASIM, Advocate for the petitioners and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor, on behalf of the Respondent, 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) On 04.07.2018 at about 9.00 PM, when both the accused were near Srirangam Melur Ayyanar Kovil by parking the lorry bearing Reg.No.TN 60 E 2769 belonging to the first accused, the deceased Andavar demanded money from the accused and when they refused, the deceased threatened to take away the lorry that night. Thereafter, at about 12.00 AM, when the deceased Andavar tried to take away the lorry, the first accused pulled the deceased out from the lorry and had beaten him. When the deceased tried to escape, both the accused chased him and in the vacant space behind Shankar grocery shop situated on the path to Melur North Street, with an intention to murder the deceased Andavar, the first accused took a bamboo stick lying there and hit the deceased Andavar in front of his head and instigated the second accused to kill the deceased. The second accused took an aralai stone lying there and threw it on the head of the deceased. The first accused once again hit the head of the deceased with the bamboo stick and thereby, they committed the murder of the deceased.



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(ii) On receipt of the complaint Ex.P1 from P.W.1, Kumar, P.W.16, Sub Inspector of Police, Srirangam Police Station registered the FIR (Ex.P11) in Crime No.443/2018 for the offence under Section 302 IPC.

(iii) P.W.17, Inspector of Police took up the investigation and visited the scene of occurrence and prepared the observation mahazar and rough sketch and examined the witnesses and prepared the inquest report and sent the body of the deceased Andavar for postmortem. Thereafter, on 06.07.2018, he had arrested the second accused and on the basis of his confession, recovered the blood stained clothes under mahazar and sent him to judicial custody. On 10.07.2018, the first accused surrendered before the Judicial Magistrate, Musiri and on 20.07.2018, the first accused was taken into custody and during enquiry, he gave a confession statement and based on his confession, the blood stained clothes and the watch of the deceased were recovered in the presence of the witnesses. After collecting the medical and forensic reports, he completed the investigation and filed the final report under Section 173(2) of the Cr.P.C.

(iv) After taking the final report as P.R.C.No.46/2019, the learned Judicial Magistrate No.III, Tiruchirappalli had furnished the copies of the case records to the

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



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accused on free of cost under Section 207 Cr.P.C and the case was committed to the Principal District and Sessions Court, Tiruchirappalli. The case was taken as Sessions Case No.133 of 2019 and made over to the file of the learned II Additional District and Sessions Judge, Tiruchirappalli for trial.

(v) On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the Trial Court, after hearing the accused, framed the charge against the accused under Section 302 IPC.

(vi) When questioned, the accused pleaded 'not guilty'. To prove the case, the prosecution examined 17 witnesses and marked 17 exhibits and 12 material objects. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

(vii) By judgment dated 24.01.2023, the Trial Court found the accused A1 and A2 guilty for the offence under Section 302 IPC. The Trial Court convicted and sentenced the accused as follows:



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Accused	Section of law	Sentence	of Fine amount
		Imprisonment	
A1	302 IPC	Life imprisonment	Rs.2000/-
A2	302 IPC	Life imprisonment	Rs.2000/-

2. Challenging the said conviction and sentence, A1 and A2 has filed Crl.A. (MD).No.719 of 2023. Pending appeal, they have filed the present Criminal Miscellaneous Petition seeking for suspension of sentence.

3. The learned counsel appearing for the petitioners/ A1 and A2 would submit that though the prosecution claims that P.W.2 is an eye witness to the occurrence, he has not supported the case of the prosecution. He would further submit that in this case, FIR came to be registered on the complaint of P.W.1, who is the cousin of the deceased. As per his evidence, the second accused had informed him on 05.07.2018 that his cousin, the deceased, was lying in an awkward position near Shankar grocery shop and that he had gone there and seen his brother dead with bleeding injuries and that a bamboo stick and rough stone were lying nearby. He had also deposed that the Police had called a sniffer dog. If it is true that P.W.1 had seen the second accused, at that time, there is no necessity for calling the sniffer dog. The prosecution claims that



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P.W.2 and P.W.3 are witnesses to the occurrence. P.W.2 is claimed to be an eye witness to the occurrence. The case of the prosecution is that P.W.2 is the person who has seen the occurrence and informed P.W.1 about the occurrence, whereas, he has not supported the case of the prosecution during cross-examination. Further, even as per the prosecution, the alleged occurrence is said to have taken place when the accused and deceased were all in inebriated condition and it is also the case of the prosecution that the deceased had threatened the accused that he will take away his lorry by force over money dispute. Hence, the learned counsel prays for grant of suspension of sentence.

4. The respondent has filed a counter affidavit. The learned Additional Public Prosecutor appearing for the respondent would submit that deceased had threatened the petitioners that he will take away the lorry over money dispute. Later, as per the evidence of P.W.3, when the deceased was in an inebriated condition, the petitioners have assaulted him with a bamboo stick and thereafter, thrown a rough stone over his head and they committed the murder of the deceased. Hence, he prays for dismissal of the application for suspension of sentence.

5. Heard both sides and perused the materials available on record.



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6. There are several contradictions in the evidence of the witnesses. According to the prosecution, P.W.2 and P.W.3 are eye witnesses to the occurrence, however, they have not supported the case of the prosecution. On perusal of records, we find that the petitioners have made out a prima facie case for grant of suspension of sentence and this Court is inclined to grant suspension of sentence to the petitioners/A1 and A2.

7. Accordingly, the Criminal Miscellaneous Petition is allowed and the substantive sentence of imprisonment alone imposed on the petitioners/A1 and A2 herein is suspended, subject to the following conditions:

i. The petitioners are directed to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) each with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned II Additional District and Sessions Judge, Tiruchirappalli.

ii. The sureties shall affix their photographs and Left Thumb

Impression in the surety bond and the Committal Court may obtain a copy



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of their Aadhar card or Bank passbook to ensure their identity.

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iii. The petitioners shall stay at Tirunelveli and report before the Inspector of Police, Tirunelveli Town Police Station, Tirunelveli daily at 10.30 a.m. 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.

TO

- 1.THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUCHIRAPPALLI.
- 2.THE INSPECTOR OF POLICE
SRIRANGAM POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION, TIRUNELVELI



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+1 CC to M/s.K.N.GURU, Advocate (SR-7221[I] dated 02/07/2024)

ORDER

IN

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in

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Date :28/06/2024

RK/(02/07/2024) 9P / 7C

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