



Crl.M.P.(MD).Nos.13574 and 11785 of 2023

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

Wednesday, the Third day of July 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.13574 and 11785 of 2023
in
Crl.A.(MD).Nos.875 and 727 of 2023

1 DHILIP KUMAR

2 THIRUVAAZHI @ PODI THIRUVAAZHI, ... PETITIONERS/PETITIONERS/
ACCUSED 1 & 8
IN CRL.MP(MD).13574/2023

DINESHKUMAR ... PETITIONERS/APPELLANT/ A2
IN CRL.MP(MD).11785/2023
Vs

THE INSPECTOR OF POLICE
AARALVAIMOZHI POLICE STATION,
NAGERCOIL,
KANYAKUMARI DISTRICT.
CRIME NO.155 OF 2015.

... RESPONDENT/RESPONDENT/
COMPLAINANT
IN CRL.MP(MD).13574/2023

... RESPONDENT/RESPONDENT
IN CRL.MP(MD).11785/2023

Prayer in CRL MP(MD). 13574/ 2023 :

<https://www.mhc.tn.gov.in/judis> 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 by the Judgment dt.14.7.2023 made in SC.No.278 of 2017 on the file of Additional District Sessions Court(Fast Track Court),Kanyakumari, Nagercoil pending disposal of the above Criminal Appeal and enlarge the Petitioner on bail.

Prayer in CRL.A(MD).875/2023:

Pleased to call for the records relating to the Judgment dated 14.07.2023 made in S.C.No.278 of 2017 on the file of Additional District Session Court(Fast Track Court), Kanniyakumari and set aside the conviction and sentence imposed against the Appellant and allow above appeal by acquitting the Appellant.

Prayer in CRL MP(MD). 11785/ 2023 :

To suspend the sentence imposed on the petitioner by the Additional District Sessions Court (Fast Track Court), Nagercoil, Kanyakumari District in SC.No.278 of 2017 by his judgment dated 14.07.2023 and enlarge the petitioner on bail pending disposal of the above Appeal.

Prayer in CRL.A(MD).727/2023:

Pleased to call for the records of the judgment passed in S.C.No.278 of 2017 dated 14.07.2023 on the file of Court of Additional District Sessions Court(Fast Track Court), Nagarcoil, Kanniyakumari District and allow the appeal and to release of appellant convict/accused-A2.

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 Mr.AJMAL KHAN, Senior Advocate for M/S.AJMAL ASSOCIATES, for the petitioner in CRL.MP(MD).13574/2023 and Mr.V.KATHIRVELU, Senior Advocate for Mr.S.MUTHUMALAI RAJA, Advocate for the Petitioner in CRL.MP(MD). 11785/2023 and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent in both Petitions, 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) The first and second accused are brothers. The eighth accused is the father



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of the seventh accused and they are residing in Thirupathisaram. On 30.04.2015, in Perumal Kovil Temple festival at Thirupathisaram, there was a dispute between the accused party and one Golappan and others, who are friends of the deceased Lakshmanakumar, regarding erecting of banner and A2 Dineshkumar was attacked, for which, a criminal case was registered in Crime No.152/2015 for the offences under Sections 294(b) and 324 of IPC. Pursuant to the same, on 02.05.2015, at about 5.30 PM, when the deceased Lakshmanakumar and one Velu (P.W.2), who is the relative of Golappan, were walking near Boothamman Temple, the accused persons came in four motorcycles with deadly weapons and intercepted the deceased Lakshmanakumar and the said Velu. A1 attacked the deceased on his left chest with an aruval and A7 attacked the left hand and when the deceased fell down, A8 attacked him in the hip with aruval. When P.W.2 Velu intervened, A2 tried to attack the neck of P.W.2, P.W.2 prevented the attack and his upper hand was injured. When the defacto complainant Balakrishnan, who is the father of the deceased Lakshmanakumar, came to stop the attack, he was kicked by the accused Diwakar @ Sathish on his stomach and when P.W.3 and P.W.4 came to rescue, the accused persons escaped in their motorcycles. Due to the occurrence, the deceased sustained grievous injuries and he was taken to Asaripallam Government Hospital by the defacto complainant, Balakrishnan, his wife P.W.1 and P.W.5 Lakshmanan. P.W.15



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Doctor Subramaniam examined the deceased and declared him as 'brought dead' and informed the same to Aralvaimozhi Police Station. The said Velu (P.W.2), who was injured, was admitted in a private hospital.

(ii) On receipt of complaint Ex.P21 from the defacto complainant, Balakrishnan, Neethiraja (P.W.16), Sub Inspector of Police, Aralvaimozhi Police Station registered the FIR (Ex.P22) in Crime No.155/2015 for the offences under Sections 147, 148, 149, 294(b), 323, 307 and 302 IPC.

(iii) Periyasamy, Inspector of Police took up the investigation and visited the scene of occurrence and prepared the observation mahazar and rough sketch and recovered the blood stained thar pieces (M.O.1) and plain thar pieces (M.O.1 and M.O.2) under Ex.P3 Mahazar and examined the witnesses and prepared the inquest report and sent the body of the deceased Lakshmanakumar for postmortem. After postmortem, he recovered the blood stained clothes of the deceased (M.O.3 to M.O.5) and sent the same to the jurisdictional Magistrate under Form-95. The Inspector of Police, Periyasamy, had arrested the accused A4 and A8 and on the basis of the confession of the accused, he had recovered the weapons and the motorcycle and sent the accused to judicial custody. A1, A3 and A5 to A7 surrendered before the Judicial Magistrate, Boothapandi. On the basis of their confession, M.O.9 to M.O.15 materials were recovered.



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(iv) Due to the transfer of Periyasamy, Inspector of Police, Jeyachandran (P.W.17), Inspector of Police, took up the case for investigation and arrested A2 and on the basis of the confession of the accused, recovered the weapon (M.O.16) and sent the same to the jurisdictional Magistrate under Form-95 and the accused was sent to judicial custody. P.W.17 examined the witnesses and recorded their statements and thereafter, altered the offences to Section 323, 294(b), 120(b), 147, 148, 302, 341 and 307 of IPC and sent the alteration report (Ex.P48) to the jurisdictional Magistrate. P.W.17 handed over the case records to P.W.19 Ilangovan, who had taken charge as Inspector of Police, Aralvaimozhi Police Station, for further investigation. P.W.19 took up the investigation and examined the witnesses and 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.

(v) The final report was taken on file in P.R.C.No.6/2016 by the learned District Munsif cum Judicial Magistrate, Boothapandi. During the pendency of the case, since the accused Diwakar @ Sathish and one Thulasi Manikandan were absconding, the case was split up in P.R.C.No.9/2017 against them. The learned Judicial Magistrate had furnished the copies of the case records to the accused on free of cost under Section 207 Cr.P.C and the case in P.R.C.No.6/2016 was committed to the learned Principal District and Sessions Judge, Nagercoil. The case was taken up in



S.C.No.278/2017 and made over to the learned Additional District Sessions Judge (Fast Track Court), Kanyakumari, Nagercoil for trial.

(vi) 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 following charges:

Accused	Charges framed
A1	120B, 148, 341, 302, 307 r/w 149 IPC
A2	120B, 148, 341, 302, r/w 149 and 307 IPC
A3 to A6	120B, 147, 341, 302 r/w 149 and 307 r/w 149 IPC
A7 and A8	148, 341, 302 and 307 r/w 149 IPC

(vii) When questioned, the accused pleaded 'not guilty'. To prove the case, the prosecution examined 19 witnesses and marked 52 exhibits and 16 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.

(viii) By judgment dated 14.07.2023, the Trial Court found the accused A1, A7 and A8 guilty for the offences under Sections 148, 341, 302 and 307 r/w 149 IPC. A2 was found guilty for the offences under Sections 148, 341, 302 r/w 149 and 307 IPC.



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The Trial Court convicted and sentenced the accused persons as follows:

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Accused	Section of law	Sentence of Imprisonment	Fine amount
A1, A7 and A8	302 IPC	Life imprisonment	Rs.5000/- in default to undergo one year rigorous imprisonment
A2	302 r/w 149 IPC		
A1, A2, A7 and A8	148 IPC	One year rigorous imprisonment	-
	341 IPC	One month rigorous imprisonment	-
A2	307 IPC	5 years rigorous imprisonment	Rs.3000/- in default to undergo one year rigorous imprisonment
A1, A7 and A8	307 r/w 149 IPC		

Sentences were ordered to run concurrently and the period of incarceration already undergone by the accused was ordered to be set off under Section 428 Cr.P.C. A1 and A2 were acquitted of the charge under Section 120B IPC and A3 to A6 were acquitted



of all the charges.

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2. Challenging the said conviction and sentence, Dhilip Kumar/A1 and Thiruvaazhi @ Podi Thiruvaazhi/A8 has filed Crl.A.(MD).No.875 of 2023 and Dineshkumar/A2 has filed Crl.A.(MD).No.727 of 2023. Pending appeals, they have filed the present Criminal Miscellaneous Petitions seeking for suspension of sentence.

3. The learned Senior Counsel appearing for the petitioners would submit that the criminal case came to be registered based on the complaint Ex.P21 given by the father of the deceased, Balakrishnan. However, since he passed away prior to trial, he was not examined. The mother of the deceased was examined as an eye witness to the occurrence. However, on perusal of Ex.P21 complaint, the father of the deceased has not spoken about the presence of his wife P.W.1 at the scene of occurrence. Further, even as per the evidence of P.W.17 Investigating Officer, he has categorically deposed that during investigation, he came to know that P.W.1 was not present at the scene of occurrence. The evidence of P.W.3 and P.W.4 also rules out the presence of P.W.1 at the scene of occurrence. He would further submit that P.W.3 and P.W.4 are planted as eye witnesses to support the case of the prosecution and their presence at the scene of occurrence is also highly doubtful. The Trial Court taking into consideration the exaggeration and the contradictions in the evidence of the witnesses, has acquitted A3 to A6 in this case. Further, P.W.2, the injured witness is



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said to have taken treatment in a private hospital and the injury said to have been sustained by P.W.2 is only simple in nature. There is also doubt with regard to the place of injury sustained by P.W.2. He would further submit that several arguable points are available and that the petitioners were on bail during trial and they have not misused the liberty granted to them and since it would take considerable time for the case to be taken up for final hearing would pray for grant of suspension of sentence.

4. The respondent has filed a detailed counter. The learned Additional Public Prosecutor appearing for the respondent would submit that due to dispute regarding placing of banners during a temple festival, there was previous enmity between the deceased group and the accused group. Pursuant to the same, on 02.05.2015 at 5.30 PM, the petitioners/accused along with others have gone to the place of occurrence in four motorcycles and committed the murder of the deceased. Since the defacto complainant, father of the deceased passed away prior to trial, he was not examined as a prosecution witness. The mother of the deceased, who is an witness to the occurrence, has been examined as P.W.1 and P.W.2 is an injured witness. P.W.3 and P.W.4 are also witnesses to the occurrence and their evidence is cogent supporting the case of the prosecution. He would further submit that as far as the accused A1 and A2 are concerned, they have got previous cases against them, which are pending



and thereby, he prays for dismissal of the applications.

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5. In reply, the learned Senior Counsel appearing for the petitioners would submit that he is not pressing the application in respect of A1 Dhilip Kumar (first petitioner in Crl.M.P.(MD).No.13574 of 2023). As far as A2 Dineshkumar (petitioner in Crl.M.P.(MD).No.11785 of 2023) is concerned, the previous cases against him have ended in acquittal and in this case, he is said to have inflicted injury on P.W.2 alone and he has not caused any injury to the deceased. As far as A8 Thiruvaazhi @ Podi Thiruvaazhi (second petitioner in Crl.M.P.(MD).No.13574 of 2023) is concerned, he has got no previous cases.

6. Heard the learned counsels on both sides and perused the materials available on record.

7. Having gone through the evidence, this Court finds that as far as A2 is concerned, he is said to have only attacked P.W.2 and not the deceased. As far as A8 is concerned, he is said to have inflicted a single injury, which is not on a vital part. Hence, taking into consideration the facts and circumstances, we find that it is a case for grant of suspension of sentence for A2 (petitioner in Crl.M.P.(MD).No.11785 of 2023) and A8 (second petitioner in Crl.M.P.(MD).No.13574 of 2023) alone.

8. Accordingly, Crl.M.P.(MD).No.13574 of 2023 is partly allowed as regards A8 and dismissed as not pressed as regards A1. Crl.M.P.(MD). No.11785 of 2023 filed by



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A2 is allowed and the substantive sentence of imprisonment alone imposed on the second petitioner in Crl.M.P.(MD).No.13574 of 2023/A8 and the petitioner in Crl.M.P.(MD).No.11785 of 2023/ A2 is suspended, subject to the following conditions:

- i. The petitioners/ A2 & A8 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 District Munsif cum Judicial Magistrate, Boothapandi, Kanyakumari District.
- 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 petitioners/ A2 and A8 shall stay at Chennai and report before the Inspector of Police, Egmore Police Station, Chennai daily at 10.30 a.m. until further orders.

sd/-
03/07/2024

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05/07/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

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1 THE ADDITIONAL DISTRICT SESSIONS JUDGE (FAST TRACK COURT),
NAGERCOIL,
KANYAKUMARI DISTRICT.

2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
BOOTHAPANDI,
KANYAKUMARI DISTRICT.

3 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, KANYAKUMARI DISTRICT AT
NAGERCOIL.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI.

5 THE INSPECTOR OF POLICE
AARALVAIMOZHI POLICE STATION,
NAGERCOIL,
KANYAKUMARI DISTRICT.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

THE INSPECTOR OF POLICE,
EGMORE POLICE STATION,
CHENNAI.

+1 CC to M/s.M/S.AJMAL ASSOCIATES, Advocate (SR-7373[I] dated 04/07/2024)

+1 CC to M/s.M/S.S.MUTHUMALAI RAJA, Advocate (SR-7318[I] dated
03/07/2024)



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ORDER
IN
Crl.M.P.(MD).Nos.13574 and 11785 of 2023
in
Crl.A.(MD).Nos.875 and 727 of 2023
Date :03/07/2024

SA/SAR. /05.07.2024/13P/10C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.