

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MAIN CASE No.: CrI.A.No.144 of 2022

PROCEEDING SHEET

Sl. No	DATE	ORDER	
04.	17.10.2022	<u>MGR, J & TMR, J</u> <u>IA.No.1 of 2022</u> This application has been filed on behalf of the petitioners-appellants-accused under Section 389(1) Cr.P.C to suspend the sentence passed against the petitioners in Sessions Case No.91 of 2019 on the file of the III Additional Sessions Judge, Rajampet, and release the petitioners on bail, pending criminal appeal. Heard learned counsel for the petitioners-appellants-accused and learned Additional Public Prosecutor appearing for the respondent-State. By the judgment impugned, the trial Court found the petitioners-accused guilty for the offences punishable under Section 302 read with 34 IPC and accordingly sentenced to rigorous imprisonment and to pay fine of Rs.500/- each, in default of payment of fine, to undergo simple imprisonment for one month each. Learned counsel for the petitioners submits that P.Ws.1,2,3 & 5 are eyewitnesses. There is contradiction in their evidence. There is no consistency as to the <i>overt acts</i> attributed to A2. None of the witnesses spoke that the petitioners attacked deceased. Even the wife of the	

		deceased, who was examined as PW14, did not support the case of the prosecution. The trial Court, without looking into the aspect that there are no specific <i>overt acts</i> against the petitioners, merely on the ground that the petitioners are present at the scene at the time of commission of offence, found the petitioners guilty, convicted and sentenced for the offence punishable under Section 302 IPC. He has drawn the attention of this Court to the evidence of PWs1 & 2 and submitted that there are no specific <i>overt acts</i> attributed against each of the petitioners-accused. He has also drawn the attention of this Court to the evidence of the Doctor-PW10 who examined PW.2 and submitted that as per the evidence of PW10, the injuries sustained by PW2 are simple in nature and could be caused by blunt object. He further submits that in identical matter, i.e., in Crl.A.No.180 of 2018, the common High Court granted bail to the accused therein and placed on record a copy of the said order. He also relied upon the order dated 27.09.2016 in Crl.A.MP.No.1476 of 2016 in Crl.A.No.947 of 2016 and the decision of the Hon'ble Apex Court in Nagarjit Ahir v. State of Bihar [(2005) 10 SCC 369]. On the other hand, learned Additional Public Prosecutor opposed the application and submits that the evidence of PW2 reveals that all the accused attacked the deceased. Hence, the ingredient of common intention	
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		under Section 34 IPC attracts to the petitioners and the trial Court rightly convicted the petitioners for the offence punishable under Section 302 read with 34 IPC. He further submits that in CrI.A.No.180 of 2018 relied on by the petitioners, this Court considered granting bail <i>inter alia</i> observing that none of the witnesses therein stated that the accused have attacked the deceased or caused any injury to the deceased or to PW1 therein. But in the case on hand, as per the evidence of PW2, all the accused came upon the deceased and fell on him and A1 beat the deceased with a big stone on his chest and A2 beat the deceased with a big stick on the backside of the head of the deceased; A1, A3, A4 and son of A1 Chinna Reddaih fell upon them and beat them i.e., PW2, deceased and PW1. He further submits that in considering application for suspension of sentence, appellate Court has to only examine as to whether there is such patent infirmity in order of conviction that renders order of conviction <i>prima facie</i> erroneous and where there is evidence, that was considered by trial Court, it is not open to court considering application under Section 389 to reassess and/or re-analyse same evidence and take different view, to suspend execution of sentence and release convict on bail. In support of the his contentions, he placed reliance on the decision of the Supreme Court in Preet Pal Singh v. State of Uttar Pradesh and another [(2020) 8 SCC 645].	
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		Having considered the submissions of both the sides and on perusal of the record, in the facts and circumstances of the case, since PW2 categorically stated in her evidence that all the accused came upon the deceased, this Court <i>prima facie</i> is not convinced with the submissions made by learned counsel for the petitioners and found force in the submissions of learned Additional Public Prosecutor. Hence, we are not inclined to suspend the sentence and enlarge the petitioners on bail at this stage. Accordingly, the application is dismissed. _____ MGR, J _____ TMR, J Vjl	
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