



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

Tuesday, the Twelfth day of July Two Thousand Sixteen

PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP (MD) No.5168 of 2016
IN
CRL A (MD) No.176 of 2016

RAJA

...APPELLANT/PETITIONER/ACCUSED

Vs

STATE REB.BY
THE ASSISTANT COMMISSIONER
TALLAKULAM,
CR NO. 196/16,
ANNA NAGAR POLICE STATION,
MADURAI.

... RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of imprisonment imposed by the Learned III Additional Sessions Judge, (PCR) Madurai in S.C.No.40/2004 dated 29.02.2016 and enlarge the petitioner/appellant on bail, pending disposal of the above said criminal appeal and thus render justice.

Order :This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S A.S.RAJESWARI, Advocate for the petitioner and of M/s.P.Kandasamy Government Advocate(Crl.Side) on behalf of the Respondents the court made the following order:-

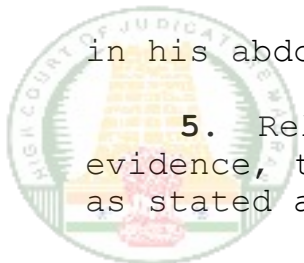
The sole accused in the Special Sessions Case in Spl.S.C.No.40 of 2004, on the file of the learned Special Judge under S.C./S.T. (P.T.) Act / III Additional Sessions Judge, Madurai, while challenging his conviction and sentence, seeks appeal bail under Section 389 Cr.P.C.

2. After trial, he has been convicted and sentenced as under:

Conviction	Sentence
Section 307 I.P.C.	7 Years R.I. + fine Rs.3,000/-, i/d 6 Months S.I.

3. Fine amount has been paid. Now, the petitioner has been lodged in Central Prison, Madurai.

4. The accused is accused of having prior knowledge that the victim Subbiah was suffering out of surgical wounds and kicked him



in his abdomen with a view to do away with him.

5. Relying on the oral evidence of P.W.1 and the medical evidence, the Trial Court has convicted and sentenced the petitioner as stated above.

6. According to the learned counsel for the petitioner, apart from the alleged overtact not being established beyond all reasonable doubts, in the facts and circumstances, an offence under Section 307 I.P.C., is not attracted. None of the witnesses have stated that the accused had prior knowledge that the victim Subbiah was suffering out of surgical wounds. The evidence of Postmortem Doctor / P.W.14 did not substantiate the manner of assault alleged by the prosecution. His evidence does not show that the alleged overtact alleged to have been caused by the accused is sufficient to cause death.

7. The learned counsel for the petitioner also submitted that F.I.R., in this case is fabricated. The F.I.R., is stated to have been lodged by Subbiah, while he was alive. However, it has not been marked. It has been marked only by the defence side. In the facts and circumstances, reading the evidence of P.W.1 it comes to light that the alleged complaint lodged by the victim Subbiah is highly doubtful.

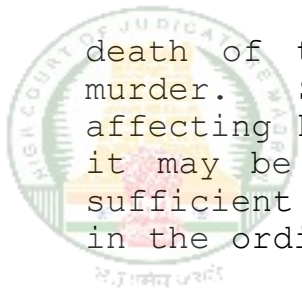
8. The learned counsel for the petitioner further contended that in the hospital, Subbiah stated to P.W.17 that he was assaulted by three known persons. P.W.18 / Investigation Officer admitted that he has not investigated on this aspect. He is also not able to pinpoint any evidence to the effect that the accused had prior knowledge that Subbiah was suffering out of surgical wounds.

9. The learned counsel for the petitioner also submitted that the cross-examination of P.W.2 revealed that he is not an ocular witness and he is only an after occurrence witness. Strangely, when the F.I.R., has been registered on the basis of the alleged complaint by the Subbiah, one more complaint from P.W.1 also has been received by the Police. There is *prima facie* case in favour of the petitioner.

10. On the other hand, the learned Government Advocate (Criminal Side) submitted that the evidence of Postmortem Doctor shows that Subbiah suffered mortal wound. Actually, the accused wanted to murder him, but Subbiah had narrow escape. However, subsequently, he died. In the facts and circumstances, the Trial Court appreciating the evidence rightly convicted the accused and also appropriately sentenced him.

11. I have anxiously considered the rival submissions, perused the impugned Judgment and the relevant materials on record.

12. For an offence under Section 307 I.P.C., all the necessary ingredients for an offence under Section 302 I.P.C., (Also see Section 299 I.P.C.) must present. The only missing element would be



death of the victim. That is why, it is an attempt to commit murder. So far as the *mens rea* with regard to such an offence affecting human life is concerned, it may be an intentional act or it may be an act with sufficient knowledge that the overtact is sufficient to cause death or the overtact is likely to cause death in the ordinary course of nature.

13. Now, in this case, as per the prosecution version is that, the accused with the prior knowledge that Subbiah suffered out of surgical wounds and kicked him on his abdomen. However, the Postmortem Doctor / P.W.14 would not say that the alleged overtact has connection with the death of Subbiah. This aspect has been strongly contended by the learned counsel for the petitioner. Our attention has also been invited by the learned defence counsel to the fact that none of the witnesses have spoken about the accused had prior knowledge that Subbiah was suffering out of surgical wound.

14. F.I.R., in a criminal case is an important document. It is like a blue-print for a building. It is the duty of the prosecution to show that the F.I.R., is not fabricated. In this connection, the learned counsel for the petitioner contended that the very printed F.I.R., is based on the alleged complaint lodged by Subbiah. But, the prosecution has not exhibited it. On the contrary, it has been exhibited by the defence side. He has also contended that the evidence of P.W.1 shows that Subbiah could not have given a complaint to the Police.

15. Considering all the above aspects, I am of the view that certain eminently arguable points are involved in this criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time for the disposal of the criminal appeal. I see *prima facie* case in favour of the petitioner. In the circumstances, I am inclined to grant him appeal bail.

16. Ordered as under:

(i) Appeal bail granted.

(ii) His sentence of imprisonment alone is suspended.

(iii) There shall be two sureties, they and the petitioner shall execute a bond for Rs.20,000/- (Rupees twenty thousand only) each to the satisfaction of the learned Special Judge under S.C./S.T. (P.T.) Act / III Additional Sessions Judge, Madurai.



(iv) The petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m., until further orders.

sd/-
12/07/2016

/ TRUE COPY /

WEB COPY

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

To:

1. THE SPECIAL JUDGE UNDER S.C./S.T. (P.T.) ACT /
III ADDITIONAL SESSIONS JUDGE (PCR), MADURAI.
2. THE GOVERNMENT ADVOCATE (CRIMINAL SIDE),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ASSISTANT COMMISSIONER,
ANNA NAGAR POLICE STATION, MADURAI.

+1. C.C. to M/S A.S. RAJESWARI Advocate SR.No.35723

ORDER
IN
CRL MP (MD) No.5168 of 2016
IN
CRL A (MD) No.176 of 2016
Date : 12/07/2016

SDR/NGM-MP/SAR III/12.07.2016/4P/6C