

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Thirty First day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.8561 of 2018

IN CRL A.361/2018

DHARMALINGAM, [PETITIONER/APPELLANT]

Vs

STATE BY [RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUPATTUR,
VELLORE DISTRICT.
CR. NO. 4 OF 2005.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed on the Petitioner/Appellant herein in S.C.No: 280 of 2010 by Judgment dated 15.11.2017 passed by the Learned Sessions Judge, Magalir Needhi Mandram, Fast Track Mahila Court Vellore, Vellore District and enlarge the petitioner on bail, pending disposal of the CRL.A.361/2018.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.K.BALU, Advocate for the petitioner and of [PUBLIC PROSECUTOR] on behalf of the Respondents the court made the following order:-

The petitioner, who is the sole accused, has filed this petition seeking to suspend the sentence imposed by the learned Sessions Judge, Magalir Neethimandram, Fast Track Court, Vellore, Vellore District in S.C.No.280 of 2010, dated 15.11.2017 and grant bail to him pending disposal of the above criminal appeal.

2. The learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, has convicted the petitioner for the offence under Sections 366 and 376 IPC and sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.5,000/- in default, to undergo one month Simple Imprisonment for the offence under Section 366 IPC and to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.5,000/- in default, to undergo Simple Imprisonment for a period of one month for the offence under Section 376 IPC and both the sentenced were ordered to run concurrently.

3. The brief facts of the case is that the accused fell in love with the deceased minor girl Selvi aged about 15 years studying in 10th standard. Two months prior to the date of occurrence i.e., 11.02.2005, the accused kidnapped the minor girl to Masha lodge, Thiruppattur and without her consent, he committed rape on her. Later, he refused to marry her, because of non-fulfillment of his dowry demand. In furtherance, with the assistance of the co-accused, he took the minor girl to Elagiri Hills where he had committed sexual intercourse with her on so many occasions under fictitious promise to marry her. In consequence, she became pregnant and when the minor girl asked the accused to accept her, he threatened her with dire consequences. Subsequently, the minor girl after pouring kerosene set fire on her body by self immolation. In spite of medical treatment, she died. Hence, First Information Report was registered and after investigation, charge sheet has also been filed against the petitioner.

4. After hearing both sides and on consideration of the records, charges were framed against the petitioner/accused by the trial Court under Sections 366, 376, 506(ii) and 306 of IPC and Section 4 of the Dowry Prohibition Act. After trial, the trial Judge has convicted the accused under Sections 366 and 376 IPC and sentenced as stated above. Aggrieved by the conviction and sentence passed by the trial Judge, this Criminal Appeal is filed by the petitioner. Pending appeal, the petitioner has filed this petition seeking suspension of sentence.

5. Learned counsel appearing for the petitioner/accused has drawn the attention of this Court to the statement of the deceased given to the Doctor (PW-8) and Ex.P7 (Accident Register) wherein she had deposed that it was an accidental fire during cooking in stove in her house on 11.02.2005 at 10.00 a.m. In the cross examination of PW-1 and PW-2, they also stated so, as if at the time of admitting the Government Hospital, the victim girl has stated to the Doctor. The learned counsel for the petitioner contended that since it was the accidental fire, the charge under Section 306 IPC cannot be put against the petitioner. Further, in the dying declaration given by the deceased to PW-11-Judicial Magistrate under Ex.P9, there is allegation against the accused relating to the offence under Section 376 & 306 IPC. The learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court reported in **Godhu & another vs. State of Rajasthan [1974 AIR 2188]**, wherein it has been held that the Court cannot take note part of the dying declaration against the accused. Thus, he sought for suspension of sentence pending the appeal.

6. The learned Government Advocate contended that the trial Court has not convicted the accused under Section 306 IPC. Therefore, the above contention needs no consideration by this Court.

7. On perusing the evidence of PW-1, PW-2 & PW-3 and Exs.P5-Postmortem Report and Ex.P9-Dying Declaration, it appears that the trial Court has convicted the accused/petitioner for the offence under Sections 366 and 376 IPC as rightly contended by the learned Government Advocate. Furthermore, in the postmortem report (Ex.P5)

coupled with Dying Declaration(Ex.P9), the medical evidence of P.W.8, it has been seen that fetus aged about 6 to 8 weeks was found in the uterus and the versions of PW-1(Aanjiyammal-mother of the deceased) and PW-2(Govindasamy-father of the deceased) are to the effect that the deceased was kidnapped by the accused by giving a false promise to marry her and consequently, the accused has taken the victim to various hotels and had committed sexual intercourse and thereafter, when she became pregnant, the accused refused to marry her by demanding dowry and hence, she committed suicide by self-immolation. In view of oral and documentary evidence available in support of the charge, I am not inclined to grant suspension of sentence for the present.

8. Accordingly, this petition seeking suspension of sentence, is dismissed for the present. However, the petitioner/accused is at liberty to move the Court at a later point of time.

-sd/-

31/08/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
MAGALIR NEEDHI MANDRAM,
FAST TRACK MAHILA COURT VELLORE,
VELLORE DISTRICT.

2 THE SESSIONS JUDGE,
MAGALIR NEEDHI MANDRAM, (MAHILA COURT),
COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUPATTUR, VELLORE DISTRICT.

C.C. to M/S.K.BALU Advocate on payment of necessary charges

Order

in
CRL MP.8561/2018

in
CRL A.361/2018

Date :31/08/2018

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