

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1504 of 2011

N.Govindaraj

... Petitioner/Appellant/Accused

Vs

The State rep. by
Sub Inspector of Police,
All Women Police Station,
Tirupattur,
Vellore District.
Crime No.21/2006

... Respondent/Respondent/Complainant

Criminal revision preferred under Section 397 r/w 401 of Cr.P.C. against the judgment dated 31.10.2011 passed by the Additional District and Sessions Judge (FTC), Tirupattur, Vellore District in Crl.A.No.47 of 2011 confirming the conviction and sentence passed by the Judicial Magistrate No.II, Tirupattur, Vellore District in C.C.No.422 of 2006 dated 16.03.2011.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondent : Mrs.P.Kritika Kamal, GA (Crl. Side)

सत्यमेव जयते
O R D E R

This Revision Petition has been preferred challenging the judgment dated 31.10.2011 passed by the learned Additional District and Sessions Judge (FTC), Tirupattur, Vellore District in Crl.A.No.47 of 2011.

2.It is the case of the prosecution that the revision petitioner deflowered Muthu (PW1), on the promise of marrying her and thereafter, reneged.

3.On the complaint (Ex.P1) dated 09.08.2006 given by the victim/ Muthu (PW1), Jamunarani (PW11), Sub Inspector of Police, registered a case in Crime No.21 of 2006 on 09.08.2006 under

Sections 417, 420 and 506(II) IPC and prepared the printed FIR (Ex.P6). The petitioner and the victim/Muthu (PW1) were sent for medical examination. Dr.Kumaravel (PW8), examined the petitioner and issued Medical Certificate (Ex.P2), stating that he is capable of having sexual relationship. Similarly, Dr.Meenakshi (PW9), examined the victim/Muthu (PW1) and issued a Medical Certificate (Ex.P3). Since the victim/Muthu (PW1) had delivered a child, DNA profiling was done for the petitioner, the victim/Muthu (PW1) and the child and the DNA Report (Ex.P5) shows that, the petitioner had fathered the child. After completing the investigation, Final Report was filed in C.C.No.422 of 2006 before the Judicial Magistrate No.II, Tirupattur against the petitioner for the offences under Sections 417 and 506(II) IPC.

4.On the appearance of the petitioner, copies of relied upon documents were furnished to him under Section 207 Cr.P.C. and charges for the offences under Sections 417 and 506 (II) IPC were framed. When questioned, the petitioner pleaded 'not guilty'.

5.To prove the case, the prosecution examined 11 witnesses and marked 8 exhibits. When the petitioner was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. The petitioner examined himself as DW1 and one Venkatesan as DW2.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 16.03.2011 in C.C.No.422 of 2006, convicted the petitioner and sentenced him as under :

Provision under which convicted	Sentence
Section 417 IPC	simple imprisonment for 10 months
Section 357(3) Cr.P.C.	fine of Rs.20,000/- as compensation to the victim to be paid within one month from the date of judgment, in default, to undergo simple imprisonment for 2 months

However, the petitioner was acquitted of the charges under Section 506(II) IPC. Challenging the conviction and sentence, the petitioner preferred Crl.A.No.47 of 2011 in the Court of Session, which was heard by the Additional District and Sessions Judge (Fast Track Court), Tirupattur, Vellore District and the same was dismissed on 31.10.2011, challenging which, the

petitioner has invoked the revisional jurisdiction of this Court under Section 397 r/w 401 Cr.P.C.

7. Heard Mr.A.M.Rahamath Ali, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State.

8. Before adverting to the rival submissions, it may be necessary to state here that, while dealing with a revision petition under Section 397 r/w 401 Cr.P.C., this Court cannot reappreciate the evidence, as if it is a Court of second appeal. In this regard, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659.]

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a

restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

However, if it is shown that the Courts below have overlooked any material piece of evidence, which would have otherwise turned the tables in favour of the petitioner or had grossly misappreciated the evidence, then, it is open to this Court to reappraise the same.

9.Muthu (PW1), the victim girl, has stated in her examination-in-chief that she works as a farmhand and lives with her parents; she knows the petitioner, who is her neighbour; a year ago, the petitioner came to her house and seduced her on the promise of marrying her; thereafter, he came frequently to her house and had sex with her; when she became pregnant, she asked the petitioner to marry her, for which, he told her that he would go to Bangalore to earn money and thereafter, marry her; he did not keep up his word; so, she informed her parents; her parents asked her to undergo abortion; but, it was too late and so, she delivered a male child; the matter was brought to the notice of the village elders and despite their intervention, the petitioner refused to marry her; hence, she had no other alternative, but, to lodge the complaint (Ex.P1).

10.In the cross-examination, Muthu (PW1), has stated that she is unlettered and had not been to school and therefore, she does not remember her date of birth. She has admitted that the petitioner was employed in Bangalore and would come to the village for festival days. She has also admitted that the Government had provided housing for her parents and when their house was under reconstruction, they were provided shelter by the parents of the petitioner. She has admitted that she did not make a hue and cry, when the petitioner seduced her; on his promise to marry her, she consented. She denied the suggestion that the petitioner did not have any physical relationship with her. It was further suggested that she was also having affairs with four persons viz., Anandan, Thangavel, Selvakumar and Kasilingam also, which suggestion, she denied.

11. In order to establish that Muthu (PW1) is a woman of easy virtue, the petitioner examined himself as DW1 and examined one Venkatesan as DW2. In his evidence, the petitioner has stated that he did not have any affair with Muthu (PW1) and that, she has filed a false case. Venkatesan (DW2) gave character assassination evidence against Muthu (PW1).

12. Be that as it may, the fact remains that the DNA profiling has established that the petitioner had fathered the child born to Muthu (PW1). Character of a victim of a crime is irrelevant in a case of this nature.

13. Mr. Rahamath Ali, learned counsel for the petitioner contended that the petitioner was younger to the victim and therefore, it was only an act of consensual sex and no promise of marriage was made by the petitioner, since both of them knew that the petitioner was younger to her; the petitioner, who examined himself as DW1, has given his age as 23 as on 15.09.2010; at the time of DNA profiling, he has given his date of birth as 31.08.1987 to the Deputy Director and Assistant Chemical Examiner, Forensic Sciences Department, vide Ex.P5, which is an admission relevant under Section 21 of the Indian Evidence Act, 1872. This clearly shows that he was not a juvenile and was more than 19 years of age, when he seduced Muthu (PW1).

14. Mr. Rahamath Ali, learned counsel for the petitioner placed reliance upon the evidence of Venkatesan (PW2), who has stated in the cross-examination that the petitioner is younger to the victim/Muthu (PW1).

15. In the opinion of this Court, a stray statement by a witness that the petitioner is younger to the victim without anything more cannot be the basis, for this Court to upset the finding of fact rendered by the two courts below. Neither in the cross-examination of Muthu (PW1) nor when the petitioner examined himself as DW1, such a case was projected. Hence, the plea that the petitioner was a juvenile at the time of the occurrence, cannot be countenanced.

16. Mr. Rahamath Ali, learned counsel for the petitioner pleaded for leniency in sentence. The trial Court has sentenced the petitioner to 10 months simple imprisonment, which, in the opinion of this Court is not excessive, warranting reduction.

In the result, this revision petition is dismissed as being devoid of merits and the judgment of conviction and sentence passed by the appellate Court in Crl.A.No.47 of 2011 dated 31.10.2011 and the trial Court in C.C.No.422 of 2006 dated 16.03.2011 are confirmed. The trial Court is directed to take steps to secure the petitioner and commit him to prison for undergoing the remaining period of sentence, if any. Registry is directed to send the original records to the trial Court forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.Additional District and Sessions Judge (FTC),
Tirupattur, Vellore District.

2.Judicial Magistrate No.II,
Tirupattur, Vellore District.

3.Sub Inspector of Police,
All Women Police Station,
Tirupattur, Vellore District.

4.The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.(records sent immediately)

+1cc to Mr.Rahamath Ali, Advocate Sr.2472

CRL.R.C.No.1504 of 2011

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srg 04/02/2019