

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Thirteenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.2558 of 2020

IN CRL.A.NO.67 OF 2019

M.G.R. @ ELUMALAI

[PETITIONER]

vs

THE STATE REP BY ITS,
INSPECTOR OF POLICE,
ORATHI POLICE STATION,
CR.NO. 179/2011

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.67/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in SC No. 03/2013 on the file of the Mahila Court, Chengalpattu and enlarge the petitioners on bail pending disposal of the above Criminal Appeal No. 67/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.67/2019 on the file of the High Court and upon hearing the arguments of M/S. D.LAKSHMI KALYANI, Advocate for the petitioner and of MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Appeal has been filed by the Appellant/Accused against the Judgment of conviction and sentence passed by the Mahila Court (Sessions Court) of Chengalpattu in S.C. No. 3 of 2013 dated 21.08.2018.

2. The case of the prosecution is that on 05.10.2011 at about 14.30 hours when the victim girl, aged about 18 years (mentally retarded person), was in her house lonely, the Appellant/Accused has criminally trespassed into the said house and committed rape, and hence, he is liable to be punished for the offences under Sections 450 and 376 of I.P.C.

3. The Trial Court, after full trial, has found the Appellant/Accused to be guilty for the offences under Sections 450 and 376 of I.P.C., and also sentenced him for the offence under Section 450 of I.P.C. to undergo 10 years rigorous imprisonment and also to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in addition to 6 months simple imprisonment, and for the offence

under Section 376 of I.P.C. sentenced him to undergo 10 years rigorous imprisonment and also to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to undergo 6 months simple imprisonment. He has also ordered that both the sentences shall run concurrently and also gave set off under Section 428 of Cr.P.C. with regard to the period of detention already undergone by the Appellant/Accused.

4. The learned Counsel for the Appellant/Accused has submitted that only 1 witness, viz., P.W.-1, has deposed supporting the case of the prosecution, and other 2 witnesses, viz., P.W.-5 and P.W.-6 turned hostile. She further submitted that the evidence of P.W.-1 is also not trustworthy and her evidence also contains so many material contradictions. She further submitted that according to the prosecution, the occurrence was said to have occurred on 05.10.2011 at about 14.30 hours, but the F.I.R. was registered only after 6 days and there was no proper explanation for the said delay. She further submitted that the victim girl was also sent to medical examination only after a month, i.e., on 04.11.2011, and without taking into consideration of the aforesaid facts, the Trial Court has convicted the Appellant/Accused. She further submitted that the Appellant/Accused is having valid defence and he is having chance of success in the Appeal. She further submitted that the Appellant/Accused is in custody from 21.08.2018, and therefore, she prayed to suspend the sentence.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for the Respondent has submitted that knowing fully well that the victim girl is a mentally retarded person, the Appellant/Accused has committed rape. He further submitted that P.W.-1 has categorically deposed before the Trial Court that she has seen the occurrence, and there is no reason to reject her evidence. He further submitted that Doctor's evidence also would show that the victim girl was subjected to sexual assault. He further submitted that even though the complaint was lodged immediately, the Sub-Inspector of Police has not registered the F.I.R. immediately, and on the contrary, she has issued C.S.R., and after conducting preliminary enquiry, she registered the F.I.R. He further submitted that merely because the Police officials have not taken action immediately based on the complaint lodged by the victim's father, on that ground, the Appellant/Accused cannot be acquitted in a grave crime like this. He further submitted that taking into consideration of the aforesaid facts, the Trial Court has rightly convicted the Appellant/Accused, and hence, he strongly opposed to suspend the sentence.

6. P.W.-1 has categorically deposed that she has witnessed the occurrence, and at this stage, her evidence cannot be rejected. Further, the Doctor's evidence also corroborate the evidence of the P.W.-1. Further, the victim girl is a mentally retarded person. Taking into consideration of the aforesaid facts, this Court does not find any merit to suspend the sentence awarded by the Trial Court.

7. For the aforesaid reasons, this Petition is dismissed.

-sd/-
13/03/2020

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 MAHILA COURT
SESSIONS COURT OF CHENGALPATTU

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ORATHI POLICE STATION,

C.C. to M/S. D.LAKSHMI KALYANI Advocate on payment of necessary charges

Order

in

CRL MP.2558/2020

IN CRL.A.NO.67 OF 2019

Date :13/03/2020

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RD 17/03/2020