

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 17.12.2020

Pronounced On : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5668 of 2020

in Crl.A.No.291 of 2020

Karthick

... Petitioner

Versus

The State rep. by
The Inspector of Police,
All Women Police Station,
Palladam,
Tirupur District.
(Crime No.1 of 2018)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed by learned Fast Track Mahila Judge, Tiruppur in Spl.S.C.No.14 of 2018 dated 29.04.2019 and release the petitioner on bail pending disposal of the Crl.A.No.291 of 2019.

For Petitioner : Mr.K.S.Kaviarasu

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

The petitioner herein is accused in Spl.S.C.No.14 of 2018, on the file of the Fast Track Mahila Court, Tiruppur, was convicted by the judgment dated 29.04.2019 for the offence under Section 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo 5 years Rigorous Imprisonment and imposed with a fine of Rs.5,000/- in default of payment of fine to undergo another 1 year Rigorous Imprisonment and the period of sentence already undergone by the petitioner from 15.01.2018 to 05.04.2018 is ordered to be set off. Aggrieved over the same, the present Criminal Appeal filed along with a petition for suspension of sentence.

2. The case of the prosecution is that on 14.01.2018 at about 5 p.m., the victim P.W.1 had gone near the bush to attend her nature's call, the petitioner followed her, pushed her down, laid over her,

molested her and also bit her lips. The victim made a cry and the petitioner ran away from there. Hearing the cry the people nearby came there, took the victim in ambulance to the Government Hospital, Tiruppur. The victim's date of birth is 26.05.2000. P.W.2 is the mother of the victim, who had gone along with the victim to attend the temple festival. The victim informed P.W.2 that she is going to attend nature's call. At that time, she heard the cry of her daughter. P.W.2 rushed to the scene of occurrence, she saw the petitioner lying over her daughter. Thereafter he rescued her daughter and took her to the hospital. From the hospital, information was sent to the Police Station and registered a case in Crime No. 1 of 2018 and F.I.R was registered which has been marked as Ex.P11, P.W.10, Investigating Officer took up the investigation, visited the hospital and examined victim and her mother. Thereafter visited the scene of occurrence, prepared observation mahazar, rough sketch and examined the witness present in the scene of occurrence. On the next, the petitioner was arrested and he has also sent the petitioner for medical examination. P.W.8 is the Doctor who examined the petitioner and gave medical certificate/Ex.P9. P.W.3 is the Doctor who treated the victim in the hospital and gave Accident Register, Ex.P3. P.W.5 is the Doctor who treated and examined the victim and issued medical certificate and chemical examination report Ex.P4 and Ex.P5. P.W.7 is the neighbour of the victim who corroborate the evidence of P.W.1 and P.W.2. On completion of investigation, charge sheet came to be filed in this case.

3. The prosecution has examined 10 witnesses as P.W.1 to P.W.10 and marked 13 documents as Ex.P1 to P13. On the side of the defence, mother of the petitioner was examined as D.W.1, she stated that there was dispute between her and P.W.2 with regard to fetching of water and due to which the petitioner was falsely implicated in this case. The Trial Court on examination of witnesses and materials had convicted the petitioner as stated above.

4. The learned counsel for the petitioner submitted there was a fight between D.W.1, mother of the petitioner and P.W.2, mother of the victim for which the petitioner has been falsely implicated in this case. Further on the date of occurrence there was a village temple festival. All the villagers assembled near the temple ground and witnessing the function. The petitioner took his sister's daughters to the temple festival and he was also witnessing the function. The evidence of P.W.1 and P.W.2 are contra to the evidence of P.W.3, the casualty Doctor and P.W.4, Doctor who had treated the victim. The injuries as projected by P.W.1 and P.W.2 are not found in the accident register. Further P.W.4, Doctor who examined the victim had clearly stated that there is no external or internal injury on the victim. The independent witnesses P.W.5 and P.W.6 have not supported the case of the prosecution. Other witness P.W.7 had given an exaggerated evidence as though blood was oozing out from the lip of the victim which is not a case. P.W.7 admits that during the

occurrence he was in play area witnessing the games. From the evidence of P.W.4, Doctor it is seen that the victim is aged about 18 years. The petitioner examined D.W.1, who deposed that there was a dispute between both the families. Further submitted that the victim is a minor and not proved in the manner known to law. Further from the fact of the case, it could not be seen that offence under Section 7 POCSO Act would not get attracted. The Trial Court failed to consider all these aspect and convicted the petitioner.

5. The learned Additional Public Prosecutor submitted that in this case the victim P.W.1 is the victim. The date of birth of the victim is 26.05.2000, which is proved by marking Ex.P1/birth certificate. P.W.1, victim and P.W.2 is the mother of the victim gone to the temple festival of the village. At that time, P.W.1 gone to attend the nature's call behind the bush. The petitioner hailing from the same village, seeing the victim going alone the petitioner followed her, pushed her down, laid over her, molested and bit her lips. P.W.1 raised alarm, hearing the same P.W.2 and others rushed to the scene of occurrence. On seeing them, the petitioner escaped from that place. Thereafter, P.W.1 was taken to the Government Hospital. P.W.3, Doctor treated and issued accident register. The information was sent to the respondent Police. P.W.11, Sub-Inspector of Police recorded the statement of P.W.1 and registered an F.I.R. which has been marked as Ex.P11. P.W.11 took up the investigation examined P.W.1 and P.W.2, prepared observation mahazar, rough sketch, examined the witnesses present in the scene of occurrence. P.W.7 is the neighbour of the victim who has seen the victim that bleeding injury on her lips. P.W.5 is the Doctor who treated the victim. P.W.6 and P.W.7 are the witness to the observation mahazar. P.W.8 is the Doctor who examined witness and gave Ex.P9 and Ex.P10/Medical certificate. On completion of investigation P.W.10 prepared charge sheet and filed before the Court. The Trial Court considering the evidence and materials produced convicted the petitioner.

6. Considering the rival submission and perusal of the materials, it is seen that on 14.01.2018 there was temple festival in the village. P.W.1 and P.W.2 gone to witness the same. The petitioner along with children had gone there. At about 05.00 p.m., the victim P.W.1 had gone to attend the nature's call. The petitioner followed her and committed sexual assault. P.W.1 raised alarm. P.W.2 had gone there rescued her daughter. The victim was taken to the Government Hospital, Tiruppur. It is admitted fact that the temple festival was in progress when the occurrence took place and none of the villagers have stated about the petitioner following P.W.1 and committed sexual assault. P.W.7/Neighbour stated that blood was oozing out from the injury in her lips, P.W.3 and P.W.4, the Doctors have not stated about the blood injury sustained by P.W.1.

7. The evidence of P.W.1 is contra to the evidence of P.W.4 who admitted and treated the victim. Though P.W.3 states about that teeth

mark was present on the victim's lip, P.W.4 Doctor who conducted the examination stated that there no injury on the lips. Further P.W.4 has given evidence that there was no internal or external injury on the victim and there is no sperm in the vaginal and the test proved negative. Thus the evidence of P.W.1 is contra to the medical evidence. It is strange to see that there is no independent persons have been examined in this case.

8. Further, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioner and further, the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the Fast Track Mahila Judge, Tiruppur, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the Trial Court on the first working day of once in three month of English Calender Month at 10.30 a.m. till the disposal of the appeal.

-sd/-
23/12/2020

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 FAST TRACK MAHILA JUDGE, TIRUPPUR

2 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PALLADAM,
TIRUPPUR DISTRICT.

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

Order

in

CRL MP.5668/2020

in

CRL.A.291/2020

Date :23/12/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

GKS:30/12/2020



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