

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2020

PRONOUNCED ON : 18.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.7399 of 2020

in Crl.R.C.No.1068 of 2020

Ramesh

... Petitioner

Versus

State rep. by.,

... Respondent

The Inspector of Police,
Thiruvankadu Police Station,
Sirkali-Taluk,
Nagapattinam-District.
(Crime No.77 of 2005).

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence made in Criminal Appeal No.41 of 2013 on the file of the Sessions Judge, Fast Track Mahila Court, Nagapattinam dated 31.10.2019 in confirming the conviction and sentence made in S.C.No.68 of 2008 on the file of the Principal Assistant Sessions Court, Mayiladuthurai dated 16.07.2013.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

The petitioner was convicted for offence under Section 450 IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 6 months Rigorous Imprisonment and for offence under Section 376 IPC, he sentenced to undergo 7 Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months Rigorous Imprisonment, by the learned Principal Assistant Sessions Judge, Mayiladuthurai, Nagapattinam in S.C.No.68 of 2008, dated 16.07.2013, which was confirmed by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, by judgment dated 31.10.2019 in C.A.No.41 of 2013, against which the petitioner has preferred the revision before this Court, in which, the above petition for Suspension of Sentence has been filed.

2.The case of the prosecution is that PW8, the mother of the victim on 02.04.2005, at about 03.00 p.m., after grazing her cattle, came to her house. When she entered the house, the petitioner, who is a stranger from the same village, pushed her away and fled from the house. PW8 saw her daughter/victim with bleeding. When the same was questioned, the victim informed her, the petitioner had committed forcible rape on her. Thereafter, she was taken to the Government Hospital, Sirkali and admitted as inpatient and taken treatment for ten days.

3.On receipt of the information, PW11 went to the Government Hospital, Sirkali received the complaint [Ex.P8]. PW13 registered an FIR in Crime No.77 of 2005 [Ex.P9]. Thereafter, PW14 conducted investigation, visited the scene of occurrence, prepared Observation Mahazar [Ex.P10], Rough Sketch [Ex.P11], examined the witnesses in the scene of occurrence, arrested the petitioner and sent him for medical examination. PW18, the Head Master produced the age certificate of the victim, from which it is seen that the victim is a major. PW6 is the Radiologist, who had taken X-Ray and given certificate [Ex.P3]. PW7 is the Casualty Medical Doctor, who admitted the victim in the hospital. PW15, the Doctor examined the victim. PW16, the Forensic Doctor examined the Material Objects [MO1 to MO4]. In this case, PW19 is the another Doctor examined the victim. In this case, PW14 conducted major part of the investigation and handed over the investigation to PW17. PW17 conducted further investigation, filed charge sheet.

4.During the trial, the prosecution has examined 19 witnesses and marked 21 documents and MO1 to MO4 were recovered and on the side of the defence, no witnesses were examined and no documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above and the same was confirmed by the lower appellate Court.

5.The learned counsel for the petitioner submitted that in this case, the victim was not examined as witness, since she passed away one year after the occurrence. The learned counsel further submitted that the majority of the witnesses viz., PW1 to PW5, PW9 and PW10 had not supported the case of the prosecution and were treated hostile. Except PW8, who is the mother of the victim, none have spoken about the occurrence. The other witnesses viz., PW7, PW15, PW16 and PW19 are the medical witnesses. PW6 is the Radiologist who certified that the victim was major at the time of occurrence. PW18 is the Head Master, who submitted the age certificate [Ex.P20] of the victim. It is proved that the victim was a major. It is seen that PW7 is the Casualty Medical Doctor who examined the victim on 02.04.2005 in Government Hospital, Sirkali and issued Accident Register [Ex.P4]. PW7 examined the petitioner and given Potency Certificate [Ex.P5]. PW15 the Doctor, examined the victim, found no external injuries in the body and in the private parts of the victim except bleeding. PW19 stated that the victim took treatment as inpatient up to 13.04.2005. This witness/PW19 had given a report stating that the victim was having urinary infection and the bleeding could have been for that reason

and she gave the report Ex.P21. The other witnesses namely PW11, PW12, PW13, PW14 and PW17 are the police officials, who had taken part in the investigation. PW16, the Forensic Doctor categorically stated that in the Material Objects [MO1 to MO4], there was no presence of semen and blood was deducted and grouping of blood could not be found.

6.The learned counsel for the petitioner further submitted that the trial Court as well the lower appellate Court had convicted the petitioner merely on surmises and conjectures and there is no evidence against the petitioner. PW8, the mother of the victim had given exaggerated version, which is not corroborated by any other witnesses. She even stated that the reason for her daughter health getting deteriorated and her daughter's death is due to the petitioner, which is without any medical evidence or corroboration of other witnesses. All the other villagers and independent witnesses have not supported the case of the prosecution. Hence, he prayed for Suspension of Sentence.

7.*Per contra*, the learned Additional Public Prosecutor appearing for the respondent submitted that the victim, one year after the occurrence, died, hence, she could not be examined in this case. PW8 is the mother of the victim, who had seen the petitioner, who pushed PW8 and ran away from the place. PW8 entered into the house and found her daughter with bleeding. Thereafter, she took the victim to Government Hospital Sirkali. PW7 examined her and given the Accident Register [Ex.P4] and admitted in the hospital. PW15 and PW19 had given treatment to the victim in this case. From the hospital information was sent to the respondent, PW11 visited the hospital, recorded the complaint [Ex.P8] and thereafter, PW13 took up the investigation registered an FIR [Ex.P9] and PW14 conducted investigation, arrested the petitioner, seized the Material Objects [MO1 to MO4], prepared Observation Mahazar [Ex.P10] and Rough Sketch [Ex.P11], examined the witnesses, sent the Material Objects [MO1 to MO4] for Forensic Examination. PW16 is the Forensic Doctor, who examined the Material Objects and found blood stains in it, he gave Biological Report and Serological Report [Exs.P15 to P18]. PW17 is the Inspector, who took up further investigation, filed charge sheet in this case. The trial Court on the evidence and materials had rightly convicted the petitioner, which is also confirmed by the lower appellate Court.

8.This Court considered the rival submissions and perused the materials available on record.

9.It is seen that in this case, the victim could not be examined, since she passed away one year after the occurrence for some other reason. The majority of the independent witnesses viz., PW1 to PW5, PW9 and PW10 have not supported the case of the prosecution. The only witness spoke about the occurrence is PW8, the mother of the victim. Her evidence is without any corroboration and she had given exaggerated version. Added to it, PW15, Doctor, who examined the victim on the day of occurrence, stated that the victim did not cooperate for medical examination and she refused to

be examined on her private parts. PW19, the another Doctor stated that the victim was having Urinary infection and the bleeding could have been due to that reason. PW16, the Forensic Doctor gave Biological Report [Ex.P15] and Serological Report [Ex.P16] and Forensic Report [Exs.P17 & P18]. PW16, the Doctor from Forensic Department examined Chudithar top [MO1], Chuditha pant [MO2] of victim and examined lungi [MO3] and underwear [MO4] of the petitioner. In the Material Objects, there is no presence of any semen and it was with blood stains, the grouping of the same could not be found. In the absence of semen and coupled with the fact that the victim could not be examined. it cannot be conclusively held that there was penetrative sexual assault. The victim was having urinary infection. Further, there are infirmities in the prosecution case and arguable points involved in the revision, considering the period of incarceration and the revision is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. 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) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Mayiladuthurai 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 said Court once in three months on first working day of English Calendar Month i.e., from January 2021 at 10.30 a.m., till the disposal of the revision. The petition is ordered.

-sd/-
18/12/2020

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

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सत्यमेव जयते

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

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TO

1 THE SESSIONS JUDGE, FAST TRACK MAHILA COURT,
NAGAPATTINAM.

2 THE PRINCIPAL ASSISTANT SESSIONS COURT,
MAYILADUTHURAI.

3 THE JUDICIAL MAGISTRATE,
NO.II, MAYILADUTHURAI.

4 THE CHIEF JUDICIAL MAGISTRATE
NAGAPATTINAM. [FOR INFORMATION]

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
THIRUVENKADU POLICE STATION,
SIRKALI TALUK,
NAGAPATTINAM DISTRICT.

7 THE SUPERINTENDENT,
CENTRAL PRISON,
TIRUCHIRAPALLI.

+1 C.C. to M/S.D.VEERASEKHARAN Advocate on payment of
necessary charges SR.NO.8417

Order

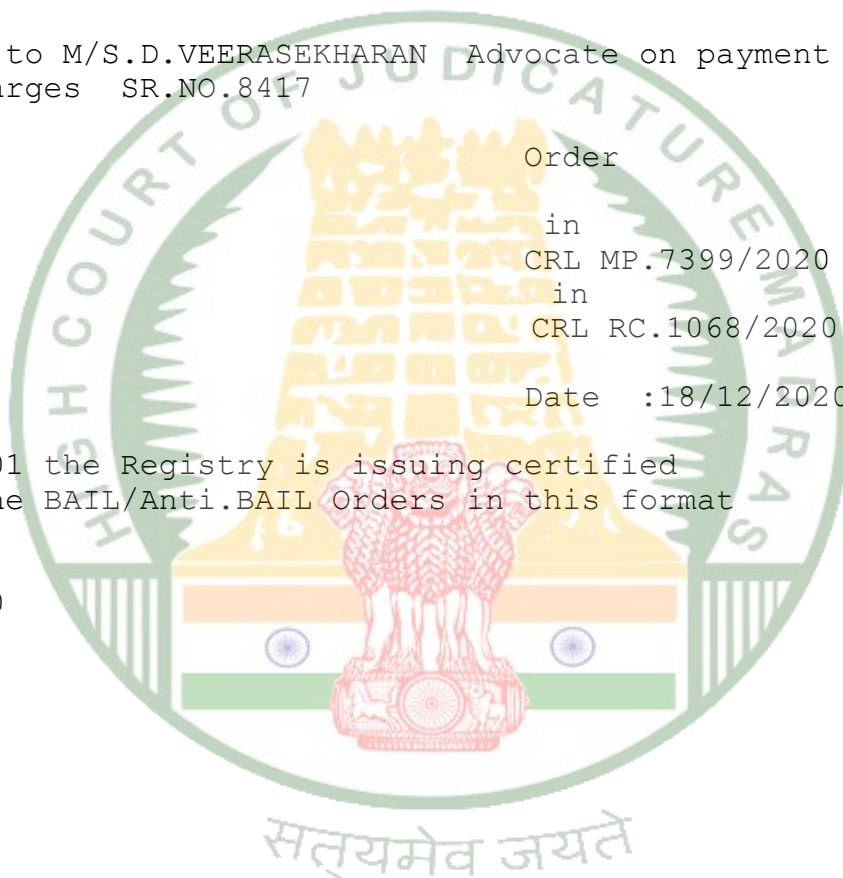
in
CRL MP.7399/2020

in
CRL RC.1068/2020

Date :18/12/2020

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