

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.11.2020
Pronounced On : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.9298 of 2019
in Crl.A.No.431 of 2019

Manigandan

... Petitioner

Versus

The State rep. by
The Sub-Inspector of Police,
All Women Police Station,
Panruti,
Cuddalore District.
(Crime No.4 of 2016)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) r/w 439 of the Code of Criminal Procedure, to suspend the sentence imposed upon the petitioner by the Sessions Judge, Mahila Court, Cuddalore in Spl.S.C.No.40 of 2017 by judgment dated 08.04.2019 and enlarge him on bail.

For Petitioner : Mr.R.Sankarasubbu for
Mr.K.G.Senthil Kumar

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

ORDER

The petitioner herein is accused in S.C.No.40 of 2017, on the file of the Sessions Judge, Mahila Court, Cuddalore, was convicted by the judgment dated 08.04.2019 for the offence under Section 4 of POCSO Act, 2012 and sentenced to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of Rs.20,000/- in default of payment of fine to undergo Simple Imprisonment for a period of two years and the period of detention already undergone was ordered to be set off. Aggrieved over the same, the present Criminal Revision Case filed along with a petition for suspension of sentence.

2.The gist of the case is that the petitioner was in love with the victim/PW2 who was minor studying 11th Standard. Victim's father working in Salem and her mother is a house wife. The victim was residing with her mother, sister and younger brother. When the

victim was studying 10th standard the petitioner used to follow her regularly and he developed intimacy with the victim. On 09.10.2015, when the victim's mother/PW1 gone to hospital with her sister, the petitioner came to victim's house and knocked the rear door. When the victim opened the door and questioned the petitioner, he informed her that he is going abroad and he would be back only after three years, hence he wanted to meet her and entered into the house. The petitioner pulled her nighty forcibly, pushed her on the floor and had physical contact with her. The victim was suffering from pain and unable to do anything. When P.W.1/mother of the victim knocked the door, none opened the door and she was shocked to see from the window that the petitioner was lying over the victim. She entered into the house through rear door. On seeing P.W.2, the petitioner ran away. P.W.1 informed about the incident to P.W.7 and one Shanthi/aunt of the petitioner. The said Shanthi and P.W.1 informed about the incident to the petitioner's mother and brother. The petitioner's brother assured that in the month of January 2016, marriage between the petitioner and victim would be held. Believing the words, no complaint was lodged against the petitioner. On 04.04.2016, victim's family came to know that the engagement for the petitioner was held with some other girl. Therefore, on 05.04.2016, a complaint was lodged against the petitioner. On receipt of the complaint, P.W.13 registered an F.I.R. P.W.15/Investigating Officer on examination of the witnesses has filed final report in this case.

3. During trial, P.W.1 to P.W.15 have been examined and Ex.P1 to Ex.P12 were marked on the prosecution side. On the defence side, D.W.1 was examined and no exhibit was marked.

4. The learned counsel for the petitioner submitted that the admitted case of the prosecution is that the petitioner and victim were in love with each other and the occurrence said to have been taken place on 09.10.2015 and thereafter the complaint was lodged on 05.04.2016 with a delay of nearly 6 months and the reason given for the delay is not acceptable. P.W.1 took P.W.2 to P.W.14/Doctor for treatment between 05.10.2015 to 12.10.2015 but the alleged occurrence was not whispered to P.W.14. P.W.2 was taken to Doctor only for treating stomach pain. P.W.14 had given treatment and advised abdomen scan and given a report which has been marked as Ex.P11. Further the evidence of P.W.1, P.W.2 and P.W.8 reveals that victim's family was interested in conducting marriage of the victim and the petitioner, who is also a relative. Since the petitioner failed to marry her and engagement of the petitioner took place with another girl on 04.04.2016 a complaint was lodged on 05.04.2016. Further, it could be seen that the Doctor/P.W.5 who had examined victim/P.W.2 given a report/Ex.P5. She had categorically stated that there is no external and internal injury for the victim. Further during vaginal examination, two finger test was conducted and proved negative, leading to inference that the victim was not sexually assaulted. Further P.W.5/Doctor admitted that she had not given any finding about any rupture of hymen. The medical evidence is in contrary to the case of the prosecution and the petitioner has been falsely implicated in this case. The petitioner is in confinement from 08.04.2019 for more than 1 ½ years. Hence prayed for granting bail to

the petitioner.

5. The learned Additional Public Prosecutor submits that in this case based on the complaint given by P.W.1/mother of the victim, a case came to be registered. The occurrence took place on 09.10.2015 and the complaint came to be lodged on 05.04.2016 and the reason for the delay is, since the petitioner is a relative and further D.W.1/brother of the petitioner was close friend to the father of the victim and there were talks going on for conducting marriage between the petitioner and the victim, hence, the complaint was not lodged immediately. The petitioner family accepted for the marriage and by giving one reason or the other delaying the marriage and finally they promised to conduct the marriage by January 2016 that is the reason they were keeping silent and hence delay in lodging the complaint. The petitioner who is studying 11th standard has clearly stated about the incident during investigation and before the Magistrate, gave statement under Section 164 of Cr.P.C. P.W.1 corroborated the evidence of P.W.2. Further Nighty and the clothes of the petitioner could not be produced, since the complaint was lodged after 6 months. P.W.5/Doctor examined the victim and clearly stated in the report/Ex.P5 that there is possibility for physical contact. P.W.1 and P.W.2 as well as P.W.7 immediately informed the incident to the brother of the petitioner. Though there is some lack of clarity in Ex.P5, P.W.2 victim categorically stated about the sexual assault committed by the petitioner which is corroborated by P.W.1 and P.W.7. The Trial Court considering these evidence and materials convicted the petitioner as stated above.

6. Considering the rival submissions and on perusal of the materials it is seen that the occurrence took place on 09.10.2015 and the complaint was lodged on 05.04.2016 with the delay of six months. The reason given for the delay is doubtful. Added to it, P.W.14/Gynaecologist, who examined P.W.2 for stomach pain, gave treatment from 05.10.2015 to 12.10.2015 and a scan was taken. P.W.1 and P.W.2 had not whispered anything about the incident to the P.W.14. Further P.W.5/Doctor who examined the victim given a report/Ex.P5 stating anything about rupture of hymen. Further the two finger test is not conclusive. The oral evidence of P.W.1 and P.W.2 reveals that there was a motive to implicate the petitioner in the case since the petitioner failed to marry the victim and the engagement of the petitioner was held on 04.04.2016 and the complaint came to be lodged on 05.04.2016. The evidence of P.W.2 is shrouded with mystery, in contradictions with the medical report. 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.

7. 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 Sessions Judge, Mahila Court, Cuddalore, 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 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/-
27/11/2020

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 SESSIONS JUDGE,
MAHILA COURT, CUDDALORE.

2 THE SUB INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PANRUTI, CUDDALORE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

+1 C.C. to M/S.R.SANKARA SUBBU (WIDE ORDER) Advocate on payment of necessary charges SR.NO.7811

Order

in
CRL MP.9298/2019

in
CRL A.431/2019

Date :27/11/2020

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TA-30/11/2020