

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.17156 of 2019

in Crl.A.No.804 of 2019

Amul Raj

... Petitioner

Versus

State rep. by:

The Inspector of Police,
Nalliapalayam Police Station,
Namakkal District.
Crime No.375 of 2016.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed in Spl.C.C.No.6 of 2017 dated 05.01.2018 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal in C.A.No.804 of 2019 pending disposal of the above criminal appeal.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.C.Raghavan,
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner, by judgment, dated 05.01.2018, in Special C.C.No.6 of 2017, passed by the learned Sessions Judge, (Fast Track Mahila Court), Namakkal.

2. The petitioner was convicted for offence under Section 366(A) IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment and for offence under Section 5(1) r/w 6 of the Protection of Children from Sexual Offence Act, 2012, sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo 6 months Rigorous Imprisonment.

3. The gist of the case is that PW1, the mother of the victim/PW2 lodged a complaint [Ex.P1] on 19.10.2016, stating that her daughter/PW2, a minor girl aged about 17 years, went along with her grand father/PW3 to Mutton Shop, was kidnapped by the petitioner. PW16, the Special Sub Inspector of Police on receipt of the complaint [Ex.P1], registered an FIR in Crime No.375 of 2016 [Ex.P9], visited the scene of occurrence, prepared Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P10], examined PW1, PW3 and other witnesses present in the scene of occurrence and on getting information about the petitioner and PW2 found near the Namakkal Bus Stand, arrested the petitioner and secured PW2 on 04.11.2016 at about 06.00 p.m.

4. PW7 recorded the statement of the victim/PW2. From the statement of the victim/PW2, it is seen, the petitioner kidnapped the victim/PW2 in the guise of marriage and committed penetrative sexual assault. Initially, they stayed in the petitioner's mother house for a day and thereafter, gone to various places. The petitioner was working in the Poultry Farm of PW4, at that time, he developed liking over the victim/PW2, followed her and kidnapped her and committed sexual assault. The victim/PW2 as well, the petitioner were produced before the Doctors/PW11 & PW13, who gave reports Exs.P3 & P5, from which, it is seen that the victim/PW2 was subjected to sexual assault. PW2 appeared before PW12/the learned Judicial Magistrate and gave statement in conformity to the case of the prosecution. PW17, on completion of investigation and collection of documents, filed charge sheet before the Court below.

5. In this case, on the side of prosecution 17 witnesses were examined and marked 13 documents. On the side of defence, no witnesses and no documents marked. The trial Court on the evidence and materials adduced, convicted the petitioner as stated above.

6. The learned counsel for the petitioner submitted that the petitioner and the victim/PW2 had liking to each other, they both belong to different community, which is the reason for the case. The petitioner and PW3 were working in Poultry Farm. PW2 had come and stayed with her grand father, at that time, the relationship between them blossomed. PW3 was making arrangement for the victim's/PW2 marriage against her wish, hence, she forced the petitioner to take her away and to marry her, otherwise, she would end her life. Having no other option, the petitioner has joined the victim/PW2 and stayed in various places over a period of one month. The learned counsel further submitted that the relationship between the petitioner and the victim/PW2 was mutual and cordial and there is no force or compulsion on her. Apart from that the petitioner was compelled to take her, since the victim/PW2 threatened to the petitioner that she would end her life. In this case, PW1, PW3 and PW6 admitted that they gave a complaint for girl missing and not for kidnapping. The insertion in the complaint [Ex.P1] making remarks against the

petitioner is an clear interpolation. Though PW1 denies the same, PW17, the Investigating Officer admitted the interpolation. PW11 examined the victim/PW2, found no injuries or abrasions on the victim/PW2. Further, PW11 admitted that the rupture of hymen could be for other reasons, likewise, the period of physical conduct cannot be conclusively held. In case of self-pleasure, the physical condition of PW2 is possible. PW15, the Head Master of the School stated the age of the victim recorded in school records is based on the version of the victim's/PW2 parents and no birth certificate was produced. In view of the same, the age of the victim is not conclusively proved. The medial evidence is not in conformity to the evidence of the victim/PW2.

7. The trial Court failed to consider these vital contradictions and improvements in the evidence of witnesses and mechanically convicted the petitioner. Hence, he prayed for suspension of sentence.

8. The learned Government Advocate [Crl. Side] appearing for the respondent Police submitted that PW1 is the mother of the victim/PW2. The victim/PW2 was staying with her mother, for some time, she was staying with her grand father/PW3. When she staying with her grand father/PW3, the petitioner, who was working along with PW3 in Poultry Farm, they both developed liking to each other using the same, the petitioner kidnapped the victim/PW2, committed penetrative sexual assault. The petitioner is a married man with children. Initially, the petitioner took the victim/PW2 to his mother's house at Vellodu and thereafter to Karur and Thogamalai. In all these places, the victim/PW2 was sexually assaulted by the petitioner. PW2 categorically stated that she was forced and taken away by the petitioner. PW3, the grand father of the victim stated that the victim/PW2 was found missing on 16.10.2016. PW4, the Poultry Farm owner stated about the petitioner working in the farm along with PW3 and from 16.10.2016, the petitioner had not reported for duty. PW5, the Mutton Shop owner is the witness to the Observation Mahazar [Ex.P2]. PW6, the cousin brother of the victim/PW2, accompanied PW1 and PW3 to the Police Station while lodging the complaint [Ex.P1]. PW7, the Women Sub Inspector enquired the victim/PW2 and recorded her statement. PW8 and PW10 are the Head Constables, who had escorted and accompanied the petitioner and the victim/PW2 for medical examination. PW11, the Doctor examined the victim/PW2 and issued medical certificate [Ex.P3]. PW13, the Doctor examined the petitioner and issued Potency Certificate [Ex.P5]. PW12, the Judicial Magistrate recorded the statement under Section 164 Cr.P.C., of the victim [Ex.P12]. PW14 is the independent witness who clearly stated about the petitioner and the victim/PW2 staying in pump shed room for two days in Dindugal. PW15, the Head Master, gave age certificate [Ex.P8] of the victim/PW2. PW16, the Sub Inspector received the complaint [Ex.P1], registered an FIR [Ex.P9]. PW17 took up investigation, visited the scene of occurrence, prepared Observation

Mahazar [Ex.P2], sent the victim/PW2 for medical examination and recorded the statement under Section 164 Cr.P.C. On conclusion of investigation, filed charge sheet in this case. The trial Court on considering the evidence and materials had rightly convicted the petitioner.

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

10. It is seen that the victim/PW2 joined the petitioner on 16.10.2016. The victim/PW2 and the petitioner were together till 04.11.2016 nearly about 40 days. During this period, both of them stayed at various places. During that time, the victim not raise any objection or cry for help. In the evidence, the victim/PW2 has not stated that she was forcibly taken and kept in confinement by the petitioner, on the other hand, she stated they were moving freely to various places. It is also seen that PW3, the grand father of the victim/PW2 was making arrangement for her marriage against her wish. Hence, she joined the petitioner. There is interpolation in the complaint/Ex.P1, which is admitted by the Investigating officer/PW17. The complaint [Ex.P1] in this case was lodged three days after the occurrence i.e., only on 19.10.2016. In the complaint [Ex.P1], it is mentioned the victim girl was found missing.

11. PW15, the Head Master admitted that the age of the victim is approximate, since it is not supported with the birth certificate. PW11, the Doctor examined the victim/PW2 found no external injuries. Hence, the medical evidence is not in conformity with the evidence of PW2.

12. Finding infirmities in the prosecution case and arguable points involved in the appeal, considering the period of incarceration and the appeal 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.

13. 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 Sessions Judge, (Fast Track Mahila Court), Namakkal 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 Calender Month i.e., from January 2021 at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-
18/12/2020

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 SESSIONS JUDGE,
(FAST TRACK MAHILA COURT), NAMAKKAL

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

4 THE INSPECTOR OF POLICE,
NALLIPALAYAM POLICE STATION,
NAMAKKAL DISTRICT

+1 C.C. to M/S.R.SANKARASUBBU Advocate on payment of necessary charges SR.NO.8452

Order

in
CRL MP.17156/2019

in
CRL.A.804/2019
Date :18/12/2020

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GKS:29/12/2020