

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.17455 of 2019

in Crl.A.No.810 of 2019

M.Karuppaiah

... Petitioner

Versus

The State rep by its,
The Inspector of Police,
All Women Police Station,
Perambalur.
(Crime No.14 of 2018).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed by the learned Sessions Judge (Mahila Court), Perambalur Special S.C.No.19 of 2019, dated 04.10.2019 and pending disposal of the above criminal appeal enlarge him on bail.

For Petitioner : Mr.E.C.Ramesh

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 in Special Sessions Case No.19 of 2019, dated 04.10.2019 passed by the learned Sessions Judge, Mahila Court, Perambalur.

2.The petitioner was convicted for offence under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default to undergo six months Rigorous Imprisonment and acquitted from the charges under Sections 294(b) and 506(ii) IPC. Since the petitioner was convicted under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012, Section 450 of IPC is deleted.

3.The case of the prosecution is that on 04.06.2016, PW1/defacto complainant/mother of the victim/PW8, after her work, reached home at about 05.00 p.m. At that time, PW8/victim was seen weeping. When PW1 questioned the same, the victim/PW8 informed that the petitioner barged into the house at about 01.00 p.m and committed penetrative sexual assault with her. PW1 immediately informed to her Grand

Mother/PW6. Since no male member in their family was available, PW1 contacted her elder daughter, who was married and residing elsewhere. The elder daughter of PW1 informed that since it has become late in the evening, she would come next day and the petitioner to be questioned then. Thereafter, on 05.06.2018, at about 03.00 p.m., PW1, PW6, PW8/victim as well PW1's elder daughter had gone to the house of the petitioner and enquired him. At that time, the petitioner assaulted the victim/PW8 and used abusive words and also abused PW1 and threatened them that they would be done away. Thereafter, they were gone to the Government Hospital, Perambalur and the victim/PW8 was admitted for injuries sustained. PW1 went to the respondent Police and lodged a complaint [Ex.P1]. PW10, the Inspector of Police, who was holding Additional Charge of the Police Station, registered an FIR, visited the scene of occurrence, prepared Observation Mahazar [Ex.P10], Rough Sketch [Ex.P11] in the presence of PW5, who is the brother of the victim, enquired PW6 and directed the victim/PW8 to be produced before PW4/Doctor. PW4, the Doctor has examined the victim/PW8 on 07.06.2018 and given a report [Ex.P6] that the hymen of the victim was ruptured and there was some brushers in the breast and in the hands. The petitioner was arrested on 06.06.2018 at about 06.30 p.m.

4.The statement of the victim was recorded under Section 164 Cr.P.C., and PW2 examined the petitioner and gave potency certificate [Ex.P3]. PW3 is the Head Master of the School, where the victim PW8 was studied and he had given age certificate [Ex.P5] and date of birth of the victim is 08.01.2002. The victim/PW8 deposed during chief examination in conformity to her statement recorded under Section 161 Cr.P.C. PW11 is the Investigating Officer, who joined the duty on 21.06.2018, took up further investigation, examined the witnesses and collected documents and after getting opinion from the Deputy Legal Advisor, filed charge sheet before the Court below.

5.During the trial, the prosecution has examined 11 witnesses and marked 13 documents and on the side of the defence 3 witnesses were examined and 6 documents marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

6.The learned counsel for the petitioner submitted that the alleged occurrence is said to have taken place on 04.06.2018, at about 01.00 p.m., but the complaint in this case was lodged only on 06.06.2018 at about 03.00 p.m. No reason given for the delay. The learned counsel further submitted PW4, the Doctor, who examined the victim/PW8 stated that there was no physical injury in the private parts of the victim/PW8, the brushes found in the breast and the hand might be due to some scuffle or fall. The trial Court failed to consider the evidence of defence witnesses namely DW1 to DW3 and defence exhibits Exs.D1 to D6. In this case, no independent witnesses were examined. PW1 is the mother, PW5 is the brother, PW6 is the mother-in-law of the victim/PW8, the other witnesses are official witnesses. During examination, all the witnesses admitted that there are houses near the house of the victim/PW8. None of the residents from there, were examined as witness. The sister of PW8, who is said to have accompanied PW1 and PW5. PW8 had questioned the

petitioner during the assault on her. PW1 is a vital witness, who was not examined in this case. He further submitted that PW8 had desire of love on the petitioner, which was rejected by the petitioner. Hence, the petitioner has been falsely implicated in this case.

7. Further, the evidence of PW4 is that there is no injury in the private parts of the victim/PW8. The victim/PW8 being a active sports person, doing regular exercise, which could be reason for the rupture of hymen. PW1, PW5, PW6 and PW8 admitted that PW8 consumed kerosene and she took treatment. This fact has been suppressed by all the witnesses. Though the reason for consumption of kerosene is stated to be accidental and said to have taken place long back. The Doctor attached to Vinayagam Hospital/DW1 through whom Ex.D1 was marked, would clearly prove that on 04.06.2018, the victim/PW8 had gone to Vinayagam Hospital at about 07.30 p.m took treatment as inpatient for consumption of kerosene. On 05.06.2018, at about 08.15 a.m., without informing the hospital authorities, she left the hospital. She did not complain of any pain in her breast and her private parts. Further, DW2, the Assistant Professor from Ariyalur Engineering College, stated that on 05.06.2018, the petitioner attended University Exam in the afternoon, which was held between 02.00 and 05.00 p.m. Hence, the contention of PW1, PW6 and PW8 that on 05.06.2018, the petitioner assaulted the victim/PW8 as well her mother is proved to be false. Through DW2, Exs.D2 to D5 were marked. DW3, the Doctor, attached to the Government Hospital, Perambalur stated that on 05.06.2018, at about 08.30 p.m., the victim was brought by her mother/PW1 and sister and when the victim/PW8 was examined, she stated that she was assaulted by two ladies and three gents at her village with stick and hands. Due to which, she was having stomach pain and brushes was found on her breast and the right hand. The Accident Register was marked as Ex.D6. PW1, PW5, PW6 and PW8 have completely suppressed about the victim/PW8 taken to the Doctor attached to Vinayagam Hospital on 04.06.2018 and on 05.06.2018 to the Doctor attached to the Government Hospital, Perambalur and they had given a false version as though the petitioner committed penetrative sexual assault on the victim/PW8. The trial Court finding that there was no use of abusive words and no assault on the victim/PW8 taken place on 05.06.2018, had acquitted the petitioner from the charges under Section 294(b) and 506(ii) IPC. On the same breadth on the evidence of PW4 and on the defence witnesses and documents, the petitioner ought to have been acquitted from the case.

8. PW9 and PW11, the Investigation Officers admitted that there have been improvement in the statements of the victim/PW8, which was recorded on 02.08.2018 to the earlier statement recorded on 06.06.2018. He further submitted that the statement recorded under Section 164 Cr.P.C on 04.06.2018 is in conformity to the subsequent statement recorded on 02.08.2018, which would go to show that PW8 had given exaggerated version implicating the petitioner. The credibility and genesis of PW8's statements are highly doubtful. The other witnesses namely PW1, PW5 and PW6 are in the nature of hearsay. When PW8's statement becomes doubtful, the trial Court ought to have acquitted the petitioner from the other charges levelled against him.

9.The learned Government Advocate [Cr1. Side] appearing for the respondent submitted that in this case PW1 is the mother of the victim/PW8. On 04.06.2018, at about 05.00 p.m., after her work had come home. At that time, PW8 victim girl was found weeping. When she enquired, the victim/PW8 informed that the petitioner had forcibly entered into the house molested her and committed penetrative sexual assault on her and threatened her not to disclose the same to anyone. Otherwise she and her mother would be killed. PW1 informed her mother-in-law/PW6 and her son/PW5, who was working in Chennai and also to her elder daughter, is was married and settled elsewhere. The elder daughter of PW1 informed that the next day she would come and thereafter, they can go and enquire the petitioner. On 05.06.2018, at about 03.00 p.m., PW1, PW6, PW8 and elder daughter of PW1 had gone to the house of the petitioner and questioned him. At that time, the petitioner had assaulted PW8 and used abusive words against them and also threatened them to do away. PW8 was taken to the hospital on 06.06.2018 for treatment. PW1 lodged the complaint to PW9, who took up the investigation, visited the scene of occurrence, prepared Observation Mahazar [Ex.P10] in the presence of PW5, enquired PW5, PW6 and the victim girl/PW8, recorded their statement and PW8 was subjected to medical examination. PW4, the Doctor examined the victim/PW8 had given his opinion [Ex.P6]. PW3 is the Head Master of the Government School where the victim studied and the school certificate and age certificate were obtained and marked as exhibits. Thereafter, the petitioner was subjected to potency test and the same was marked as Ex.P3. PW11 took up the investigation, recorded the statement of witnesses, collected the documents and after obtaining opinion, filed the charge sheet. The trial Court on the evidence produced by the prosecution as well the defence, had convicted the petitioner for offence under Section 3 r/w 4 of the Protection of Children from Sexual Offence Act, 2012.

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

11.It is seen that PW8 is the victim, PW1 is her mother, PW5 is the son of PW1, PW6 is the mother-in-law of PW1. In this case, the victim/PW8 informed her mother on 04.06.2018 about the molestation and penetrative sexual assault committed by the petitioner. PW1 informed her elder daughter. Thereafter, on 05.06.2018, at about 03.00 p.m., PW1, PW6 and PW8 had gone to the house of the petitioner, where PW1 was abused and PW8 was assaulted and all of them were threatened. Though these witnesses admitted that PW8 consumed kerosene and took treatment, the consumption of poison was accidental took place much before 04.06.2018. This contention is proved to be false on the evidence of DW1, the Doctor attached to Vinayagam Hospital. PW8 was taken treatment at Vinayagam Hospital is not denied. It is further seen that the victim/PW8 was admitted as inpatient on 04.06.2018 and she left the hospital without informing the hospital authorities. During her examination on 04.06.2018, the victim/PW8 has not stated about any pain in her breast and private parts. DW3, the Doctor attached to the Government Hospital, Perambalur stated that on 05.06.2018 at about 08.30 p.m., the victim/PW8 had come to the hospital along with her mother/PW1 and

elder sister. The Accident Register is Ex.D6, in which it is mentioned that PW8 was assaulted by two ladies and three gents at her village at about 03.30 p.m. Further, from the evidence of DW2, the Assistant Professor of Ariyalur Engineer College, it is seen that on 05.06.2018, the petitioner attended the University Exam, which was between 02.00 and 05.00 p.m and through him Exs.D2 to D5 marked.

12.From the above, it is seen that PW1 and PW8 had not given true and correct version and their statements cast doubt, clouded with mystery. Added to it, PW4/Doctor examined the victim and issued Ex.P6. Though PW8 stated she was sexually assaulted, there was no presence of semen and no injuries in her private parts. Further, there is no blood stain and the age of the rupture of hymen is not mentioned. The abrasions found on the victim could have happened during fall or scuffle and the hymen is rupture, which is possible due to physical exercise. PW6, the grand mother of the victim stated that the victim was a active sports person and won many trophies.

13.Thus on considering all these aspects, it is seen that exaggerated version has been given by PW8, which cast serious doubt. The petitioner is unable to complete his Engineering degree. Further, there are 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.

14.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, Mahila Court, Perambalur, 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 December 2012 at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

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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 COURT
MAHILA COURT, PERAMBALUR

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PERAMBALUR.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPALLI

C.C. to M/S.E.C.RAMESH Advocate on payment of necessary charges
Sr.7813

Order

in
Crl.M.P.No.17455 of 2019

in Crl.A.No.810 of 2019

Date :27/11/2020

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RVR 30/11/2020

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