

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020
PRONOUNCED ON : 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.16230 of 2019
in Crl.A.No.760 of 2019

1.Periyasamy
2.Sangeetha

... Petitioners

Versus

State Rep by
Inspector of Police,
Edapadi Police Station,
Salem District.
(Crime No.282/2015)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence and enlarge the petitioner on bail in connection with judgment dated 05.01.2019 in Special S.C.No.51 of 2015 on the file of the Mahila Court, Salem pending disposal of the above appeal.

For Petitioner : Mr.R.Ezhilarasan

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 05.01.2019 in Special C.C.No.51 of 2015, passed by the learned Session Judge, Mahalir Neethimandram, Salem.

2.The 1st petitioner was convicted and sentenced by the trial Court as follows:-

- For offence under Section 363 IPC, the petitioner sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment.

- For offence under Section 366 IPC, the petitioner sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment.
- For offence under Section 6 of Protection of Children from Sexual Offence Act, 2012, the petitioner sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment.

3.The 2nd petitioner was convicted and sentenced by the trial Court as follows:-

- For offence under Section 363 IPC, the petitioner sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment.
- For offence under Section 366 IPC, the petitioner sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment.
- For offence under Section 17 of Protection of Children from Sexual Offence Act, 2012, the petitioner sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment.

4.The case of the prosecution is that PW.1 lodged a complaint on 14.06.2015 stating that her daughter/PW2 who had gone along with the petitioners on 10.06.2015 did not return back home. Therefore, an FIR in Crime No.282 of 2015 'For Girl Missing' [Ex.P14] came to be registered. On 10.06.2015, at about 10.15 a.m., the 2nd petitioner requested PW.1 to send PW.2 to visit Doctor. The petitioners and PW.2's family are relatives and neighbours. PW.2 used to visit the house of the petitioners regularly to watch television. Using the same, the petitioners took PW.2 along with them in bus from Edapadi to Avinashi. On the way to Avinashi in Murugan Temple, at about 02.00 p.m., A1 forcibly tied Thali. Though PW.2 resisted, she was unable to do much. The 2nd petitioner, who is the wife of the 1st petitioner, conducted the marriage for the reason that they have no child out of their marriage. By marrying PW.2, they can have a child.

5.The petitioners and PW.2 had gone to Avinashi and taken a rental house, where they projected as though the 1st petitioner and PW.2 are newly married couples and the 2nd petitioner is a widowed sister of the 1st petitioner. From 10.06.2015 to 19.06.2015 they stayed in the rental house at Avinashi. During that time, the 2nd petitioner slept in one room and the 1st petitioner and PW.2 slept in another bed room. At that time, the 1st petitioner committed penetrative sexual assault on PW.2. As per the school record [Ex.P5], the date of the birth of PW.2 is 03.06.1998 and she is minor. PW.1, the mother of PW.2, PW.5, the father of PW.2, PW.6 the brother of PW.2, PW.7 the sister of PW.2 and PW.8 the brother-in-law of PW.2 who all made search of PW.2 in various places. The the house of the petitioners was locked and the petitioners were not available. On information, PW.14, the Investigating Officer along with the family members of PW.2 had gone to the house of the petitioners at Avinashi and arrested the 1st petitioner. Pursuant to his confession, the 2nd petitioner and PW.2, who were working in a mill were secured. Thereafter, the 2nd petitioner was arrested and PW.2 was rescued. PW.2 was sent for medical examination. PW.12, the Doctor conducted medical examination and gave report [Ex.P12]. The evidence of PW.1 to PW.9 corroborated to each other and their evidence is that PW.2 was forcibly took by the petitioners to Avinashi, on the way, she was taken to Murugan Temple, where the 1st petitioner forcibly tied Thali and at Avinashi, took a rental house and stayed there for 10 days. During that time, PW.2 was subjected to penetrative sexual assault. PW.12, the medical evidence confirms the same. PW.2 is a minor on the date of occurrence is proved by PW.4, the School Head Master. The 1st petitioner was examined by PW.3 and found that the 1st petitioner was potent. The evidence of PW.2 is consistent and she stated the same before the Judicial Magistrate while giving statement under Section 164 Cr.P.C. PW.14 on completion of investigation filed charge sheet before the trial Court.

6.During trial, the prosecution examined 14 witnesses and marked 22 documents and two Material Objects. On the side of defence, one witness was examined and no document was marked. The trial Court on the evidence and materials adduced, convicted the petitioners as stated above.

7.The learned counsel for the petitioners submitted that the petitioners have been falsely implicated in this case. The 2nd petitioner being the wife of the 1st petitioner, she would not have accepted her husband to have second marriage. It is admitted by PW.5 that there was dispute between the petitioners family and PW.2's family with regard to land, which is adjacent to each other and sharing of the water from the well. Due to which, the 1st petitioner's father was brutally attacked by PW.5 and there is a case pending against him. On this score, the petitioners have been falsely implicated in this case. The learned counsel further submitted that when the relationship

between the petitioners' family and PW2's family is with so much strain, PW.2 visiting the petitioners' house for watching TV and also accompanying the 2nd petitioner to hospital is highly improbable. PW.2 discontinued her studies, since she was unable to pass the exam and she stayed at home. In the meanwhile, she was given in marriage which was not accepted to her. Thereafter, she came to her parents home.

8.The learned counsel for the petitioner further submitted that the petitioners have a child and there is no necessity for the 1st petitioner to marry PW.2 for the purpose of rearing a child. The Transfer Certificate [Ex.P5] given by PW.4 is a created document for the purpose of the case. PW.1 admitted that she did not know to read or write and the complaint [Ex.P1] was written by her relative and she only affixed her thumb impression. PW.4, the Head Master of the school stated that the age of PW.2 is only tentative as stated by her parents when PW.2 joined the school and there is no birth certificate produced. PW.12, the Doctor examined PW.2 and categorically stated that the age of PW.2 is around 21 to 22 years. PW.2 is projected as minor for the purpose of this case.

9.Further, the 1st petitioner and PW.2 are cousin brother and sister and they cannot not live as husband and wife. The petitioners to prove the same, examined DW.1, who is a local resident. DW.1 categorically stated about the strained relationship between the petitioners' family and PW.2's family and PW.2 already got married to a third person and later, came to her parents house. PW.1 as well PW.14/Investigating Officer admitted that after securing PW.2, she refused to go with her parents and she was lodged in a home, which would prove that PW.2 was not happy with her parents and she only voluntarily joined the petitioners' family. Further, the 2nd petitioner and PW.2 were working in a mill, where they were secured. In such circumstances, the allegation of kidnapping and forcible sexual assault would not arise. Hence, he prayed for suspension of sentence and bail.

10.The learned Government Advocate [Crl. Side] appearing for the respondent Police submitted that PW.1 is the mother of PW.2 and PW.5 is her father. PW.1 lodged a complaint on 14.06.2015 stating that her daughter/PW2 was kidnapped by the petitioners and she had not returned home from 10.06.2015. PW.5 was informed about PW.2 and the 2nd petitioner working in a mill. Thereafter, PW.5, PW.6, PW.7 and PW.9 had gone in search of her daughter. PW.13, the Sub Inspector of Police, received the complaint [Ex.P1], registered an FIR [Ex.P14] 'for girl missing'. PW.14 took up the investigation, visited the scene of occurrence, enquired the witnesses present in the scene of occurrence, prepared Observation Mahazar [Ex.P6] and Rough Sketch [Ex.P15]. On information about the presence of the petitioners and PW.2 in Avinashi, the Police party went there arrested the 1st petitioner and secured PW.2. Pursuant to the confession of the 1st

petitioner, the 2nd petitioner was arrested and PW.2 was secured. The Doctor/PW12 examined PW.2 and gave report [Ex.P12] that PW.2 was subjected to penetrative sexual assault. The statement under Section 164 Cr.P.C., of PW.1, PW.2 and PW.3 were recorded. The school certificate [Ex.P5] was obtained from PW.4. On examination of witnesses and collection of documents, charge sheet came to be filed before the trial Court. The trial Court on conclusion of trial, convicted the petitioners.

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

12.It is seen that PW.2 was found missing from 10.06.2015 and the complaint in this case came to be lodged on 14.06.2015 with a delay of 4 days and no reason is given for the delay. On 10.06.2014, PW.2 accompanied the 2nd petitioner to visit the Doctor and she did not return back home. While that being so, why in the complaint it is not mentioned and immediately lodged. From the evidence of PW.12, the Doctor, it is found that there is no internal or external injury on the body and on the private parts of PW.2 and indicated that there is no force or violence. PW.2 accompanied the petitioners through out the journey from Edapadi to Avinashi in public transport bus. On the way, she went to Murugan Temple, where the marriage is said to have taken place between the 1st petitioner and PW.2. PW.2 and the 2nd petitioner were working in a mill is an admitted fact. PW.2 has not taken any steps to escape from the confinement if she was kidnapped against her wish.

13.It is also seen that PW.2 is aged about 17 years as per the evidence of PW.4 and Ex.P4. PW.1 admitted that she did not know to read or write and the complaint [Ex.P1] was written by the Sub Inspector of Police/PW.13 and she only affixed her thumb impression. PW.4, the Head Master of the school stated that the age of PW.2 recorded in the school certificate is as per the information of the parents of PW.2. and no age certificate produced. Hence, the age of PW.2 in Ex.P5 is tentative. PW.12, the Doctor examined PW.2 opined that the age of PW.2 is around 20 to 21 years. Further, there seems to be some strained relationship between the petitioners' family and the parents of PW.2.

14.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 petitioners herein are entitled to the relief of grant of suspension of sentence.

15. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners 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 learned Session Judge, Mahalir Neethimandram, Salem 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 February 2021 at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

21/01/2021

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,
MAHALIR NEETHIMANDRAM,
SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
EDAPADI POLICE STATION,
SALEM DISTRICT.

+1C.C. to M/S.R.EZHILARASAN Advocate on payment of
necessary charges SR NO.627

Order

in

CRL MP.16230/2019

in

CRL A.760/2019

Date :21/01/2021

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MR:03/02/2021