



Crl. R.C.(MD)No.126 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.07.2023

Delivered On : 17.07.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.126 of 2019

Dhavamani

.. Petitioner

Vs.

State rep. by
Inspector of Police,
All Women Police Station,
Aruppukottai,
Virudhunagar District.
In Crime No.4 of 2007.

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records and set aside the conviction and sentence imposed by the Principal Sessions Court, Virudhunagar District at Srivilliputhur in Crl.A.No.121 of 2010 on 01.09.2016 in confirming the conviction and sentence imposed by the Court of Judicial Magistrate, Aruppukottai, Virudhunagar District in C.C.No.75 of 2008 on 25.10.2010.

For Petitioner
For Respondent

: Mr.M.Jothi Basu
: Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



Crl. R.C.(MD)No.126 of 2019

ORDER

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This petition has been filed by the petitioner to set aside the conviction and sentence imposed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in Crl.A.No.121 of 2010 on 01.09.2016, in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Aruppukottai, Virudhunagar District in C.C.No.75 of 2008 on 25.10.2010. The petitioner is I accused in C.C.No.75 of 2008 and originally seven persons were arrayed as accused in the case for the offences under Sections 417, 420, 312, 511, 294(b) of IPC r/w. 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The trial Court convicted the I accused I.e. the petitioner herein for the offence under Section 417 of IPC and awarded punishment to suffer sentence of one year rigorous imprisonment and a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment and acquitted the A1 for other offences. The other remaining accused were acquitted from all the offences charged against them. Aggrieved by the said Judgment and conviction, the A1 has filed an appeal in Crl.A.No.121 of 2010 before the Principal District Judge, Virudhunagar and the said appeal was dismissed by confirming the judgment and conviction of the trial Court. Now the A1 filed this present criminal revision case as against the judgment passed in Crl.A.No.21 of 2020 dated 01.09.2016 on the file of the learned Principal District Judge, Virudhunagar.



Crl. R.C.(MD)No.126 of 2019

2.The case of the prosecution is that the accused and the victim are residents of Nedunkulam village. A1 is the close relative of P.W.1. A1 and the victim/P.W.1 loved each other. On the date of occurrence, when the parents of P.W.1 went to agriculture work, she alone was in her house at that time, A1 called her to cattle shed near her house and made promise to marry her and had sexual intercourse. Due to that, the P.W.1 became pregnant. When P.W.1 requested A1 to marry her, A1 gave tablets for abortion. However, the victim did not consume the tablets and A1 refused to marry the victim girl as promised by him. Thereafter, the victim narrated the above incidents and the pregnancy to her mother P.W.2, and then village Panchayat was held between the parties and A1 and his family members demanded dowry from the parents of the victim. Further A1 refused to marry the victim and all the accused abused the victim with filthy language and thereby, the victim has lodged a complaint, Ex.P1 dated 10.02.2007. On the basis of Ex.P1, the Inspector of Police, All Women Police Station, Aruppukottai, P.W.14 registered a FIR, Ex.P5 in Crime No.4 of 2007 under Sections 417, 420, 312, 511, 294(b) of IPC r/w. 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. After investigation, the Investigation Officer, P.W.14 examined the witnesses and recorded their statements and after completing investigation, she filed a final report, as against all the accused under Sections 417, 420, 312, 511 of IPC and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition



Crl. R.C.(MD)No.126 of 2019

Harassment of Women Act. After filing the final report, the trial Court has furnished copies to accused under Section 207 of Cr.P.C., and then after examining the accused and after perusing the records, had framed charges as against A1 under Sections 417, 420, 312, 511 of IPC and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. As against A2 to A7, charges were framed under Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After framing charges, the charges were read over and explained to them but the accused denied the charges.

3.The prosecution had examined P.W.1 to P.W.14 and marked Exs.P.1 to P.7 and on the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused were examined under Section 313(1)(b) of Cr.P.C., and they denied the evidences.

4.Upon perusing the oral and documentary evidence, the trial Court found the petitioner/A1 guilty for the offence punishable under Section 417 of IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo one month rigorous imprisonment. The trial Court acquitted the petitioner/A1 from charges under Sections 420, 312 r/w. 511 of IPC and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of



Crl. R.C.(MD)No.126 of 2019

Harassment of Women Act. The other accused were acquitted from the charges under Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

5. Aggrieved by the same, the petitioner/A1 preferred an appeal in Crl.A. No.121 of 2010 on the file of the learned Principal Sessions Judge, Virudhunagar District and the Appellate Court also dismissed the same, by a judgment dated 01.09.2016 and confirmed the conviction and sentence imposed by the trial Court.

6. Aggrieved by the said judgment, the petitioner has filed the present revision case on the following grounds:

The conviction and sentence imposed by the trial Court and Appellate Court is against law, weight of evidence and probabilities of the case. The Courts below failed to note that the accused and victim girl are relatives and both of them loved each other. The Courts below failed to note that after the dispute, Panchayat was held and in the Panchayat, family members of the accused only demanded dowry and not by A1. The Courts below failed to note that A1 has no intention to cheat the victim girl from the inception. The appellate Court has not followed the procedure while disposing the appeal. If the counsel for the appellant is absent, the appellate Court has to appoint a legal aid Advocate or issue notice to the appellant, before



Crl. R.C.(MD)No.126 of 2019

deciding the appeal but the appellant Court failed to engage Legal Aid counsel and did not send any notice to the appellant. The prosecution has to prove the case beyond reasonable doubt but not proved the case beyond reasonable doubt.

7. Upon perusing the documents and evidence adduced on both sides and upon perusing the judgments of lower Courts, the points for determination in this petition is whether the judgment of the Principal Sessions Court, Virudhunagar District at Srivilliputhur in Crl.A.No.121 of 2010 dated 01.09.2016 in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Aruppukottai in C.C.No.75 of 2008 dated 25.10.2010 is sustainable according to law and facts.

8. According to prosecution, the petitioner herein A1 promised to marry the victim girl P.W.1 and had sexual intercourse with her and thereafter, when the victim P.W.1 was pregnant, A1 refused to marry her. Further he gave tablets to the victim for abortion and the same was not consumed by P.W.1. The said incident was brought to the knowledge of mother of victim by the victim P.W.1. Thereafter, Panchayat was convened and in the Panchayat, the parents of the petitioner (A1) demanded dowry and thereby, the marriage was not solemnized. Thereby, the petitioner/A1 committed the offences punishable under Sections 417, 420, 312 r/w. 511 of IPC and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu



Crl. R.C.(MD)No.126 of 2019

Prohibition Harassment of Women Act.

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9. In this case, the main witness is P.W.1 victim and she deposed before the trial Court about the occurrence by stating that the accused is son of her aunt and they loved each other for one year, three years ago when she was alone in her house, the accused called her to cattle shed and promised to marry her and had sexual intercourse with her. Thereafter, she became pregnant and the same was intimated to petitioner A1 and he advised her to abort the child and gave tablets but she did not consume those tablets. Thereafter, the petitioner A1 avoided the victim P.W.1 and neglected her. Then she narrated about the incidents to her mother and Panchayat was conveyed. In the said Panchyat, the parents of petitioner A1 demanded dowry and thereafter, A1 refused to marry the victim. The above said evidence is cogent and natural. Nothing elicited from the evidence of P.W.1 in favour of the petitioner A1 and the evidence of P.W.1 has not been shaken through cross examination. There is no contra evidence adduced on the side of petitioner A1 to rebut the evidence of P.W.1 victim.

10. As far as the fact that promise to marry the victim is concerned, there is no eye witness and the same is within the knowledge of victim and the petitioner A1. The victim P.W.1 categorically stated about the promise made by the petitioner A1



Crl. R.C.(MD)No.126 of 2019

and thereafter, he had intercourse with her and thereby, she became pregnant and she gave birth of male child. During the investigation, the medical test was conducted and further the DNA test was also conducted for the child and parents. As per DNA test, Ex.P7, the biological father of the child born to the victim is the petitioner A1.

11.From the evidence of P.W.1, it is clear that petitioner A1 made promise to marry her and had sexual intercourse with the victim P.W.1 and thereafter, he refused to marry her. The Official witnesses P.W.14 and P.W.16 who conducted investigation and the P.W.5 who conducted medical examination to the victim P.W.1, have categorically stated about the investigation and medical examination done by the Officials. The other witnesses P.W.7, P.W.8 and P.W.12 have stated about the Panchayat convened by them and the parents of the accused demanded dowry and thereby, A1 refused to marry the victim. Therefore, the available evidence clearly shows the involvement of the accused in the occurrence. As far as offence under Section 417 of IPC is concerned, the available evidence shows that the accused deceived the victim promising to marry her and had sexual intercourse with her, made her pregnant and thereafter refused to marry her and then the victim gave birth of male child would constitute an offence under Section 417 of IPC. The prosecution has proved the case beyond reasonable doubts, for the offence under Section 417 of IPC. So far as other offences are concerned, the trial Court itself



Crl. R.C.(MD)No.126 of 2019

acquitted the Ist Accused petitioner herein and also acquitted all other accused from all the other charges. There is no appeal preferred either by the defacto complainant or by the prosecution as against the acquittal judgment passed for the offences and for other accused.

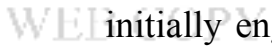
12.The trial Court had considered the evidence both oral and documentary and elaborately discussed the documents and then convicted the petitioner/A1 under Section 417 of IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment. The trial Court acquitted the petitioner/A1 from charges under Sections 420, 312 r/w. 511 of IPC and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition Harassment of Women Act. The other accused were acquitted from the charges under Sections 417, 420, 312 r/w. 511 of IPC and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition Harassment of Women Act. The trial Court also relied judgments in (i) ***Mailsamy v. State*** reported in ***1994 Crl L J 2238***, wherein this Court held that accused making promise of marriage to victim girl, inducing her to have sexual intercourse with him, then evading marriage after she become pregnant, shows the dishonest intention and the ingredients of dishonest inducement present and offence of cheating made out. (ii) ***Kumar v. State*** reported in ***2003(2) MLJ Crl. 660***, wherein this Court held that



Crl. R.C.(MD)No.126 of 2019

under the pretext of marriage, the accused had deceived the prosecutrix and subjected her to sexual intercourse with him and after she became pregnant, he betrayed her. His act would clearly attract the offence of cheating. In the case on hand, the P.W.1 categorically deposed about the occurrence, the involvement of the accused in the occurrence by false promise and the trial Court properly appreciated the evidence of P.W.1 and other witnesses and correctly came to a fair conclusion and correctly followed the Judges and applied the proposition of law. The appellate Court also after elaborate discussion, confirmed the conviction and sentence imposed by the trial Court.

13.As far as the grounds raised by the appellant that the discrepancy in respect of lodging complaint before the Police is concerned it is minor discrepancy as it will not affect the core of prosecution case. Further the ground regarding delay in sending the victim for medical examination and the minor contradiction in evidence of P.W.1 are minor discrepancies and no way affect the prosecution case. In this case, in the appellate Court the accused did not appear before the Court and did not argue the case through Advocate, thereby the appellate Court passed judgment based on available records on merits. The learned counsel for the petitioner has argued that the appellate Court ought to have issued notice to the petitioner or appointed any legal Aid counsel, but without doing so passed judgment. In this



16. Now in coming to the quantum of punishment, the petitioner was aged about 21 years at the time of occurrence, and he was depending upon the income of



Crl. R.C.(MD)No.126 of 2019

his parents. On careful perusal of prosecution evidence, they reveals that the parents of the petitioner A1 only demanded dowry in the panchayat and only because of his parents of the petitioner A1, he refused to marry the victim P.W.1 Now the petitioner got married with another woman and has a family. Once again the family of the petitioner A1 I.e., wife and child need not suffer due to the further period of imprisonment of the petitioner. The trial Court awarded a sentence of one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment. Considering the tender age of the petitioner A1 and considering that due to his parents advice, he was not in a position to marry the victim, I am inclined to reduce the sentence. Already the petitioner, A1 was under judicial custody for 270 days during trial and after appellate Court judgment. Therefore, the above said 270 days of custody undergone by the petitioner A1 can be awarded as punishment to him to meet the ends of justice.

17.In this case, both the victim and petitioner A1 committed wrong due to their tender age and thereby the victim got male child. Because of the wrong committed by the parents, the child cannot be victimized. Unfortunately in this case, the child lost love and affection of his father in his tender age and the victim P.W.1 also suffered mental agony. Therefore, this is a fit case for awarding compensation. According to Section 357A of Cr.P.C., the P.W.1 and her child minor Karnan are



Crl. R.C.(MD)No.126 of 2019

victims and they entitled for compensation under victim compensation scheme. As per Section 2(wa) of Cr.P.C., victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim include his or her guardian or legal heir. In the case on hand P.W.1 victim directly affected and suffered loss and mental agony and due to the act of accused, the son of victim namely, Karnan also suffered loss and injury. Therefore, in this case, both the P.W.1 and her child are victims as per the definition of Section 2(wa) of Cr.P.C. Thereby both P.W.1 and her child Karnan are entitled for compensation. Therefore, it is appropriate to direct the District Legal Service Authority, Virudhunagar District to decide the quantum and award compensation to the victim P.W.1 and her child Karnan in accordance with Section 357A of Cr.P.C., taking into account of cost of living and reasonable quantum of award may be passed.

18.While passing order of suspension of sentence, this Court has directed the petitioner A1 to deposit a sum of Rs.50,000/- before the lower Court and the same has to be kept in the custody of the lower Court. Already the petitioner A1 has deposited a sum of Rs.50,000/- before the trial Court at the time of releasing bail and the same also to be paid to the victim P.W.1 as compensation and the same also be taken into account by the District Legal Service Authority, while awarding



Crl. R.C.(MD)No.126 of 2019

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19.In the result the civil revision case is partly allowed and the conviction under Section 417 of IPC is confirmed. The sentence imposed on the petitioner A1 by the trial Court is modified and there shall be a sentence of rigorous imprisonment for 270 days imposed on the petitioner A1 with fine of Rs.1,000/- and the said fine amount of Rs.1,000/- was already remitted before the trial Court. The period of imprisonment already undergone by the petitioner A1 shall be set off under Section 428 of Cr.P.C.

20.Further the District Legal Service Authority, Virudhunagar is directed to decide the quantum and award compensation to the P.W.1 and her son Karnan as Per Section 357A of Cr.P.C., and the amount of Rs.50,000/- deposited before the trial Court at the time of passing order in suspension of sentence application is also ordered to be paid to the P.W.1 as compensation to her. The District Legal Service Authority, Virudhunagar has to follow the relevant rules and procedure under the victim compensation scheme and all other relevant rules and laws applicable in this regard and the said process shall be completed within two months from the date of receipt of copy of this order and the compliance report has to be filed before this



Crl. R.C.(MD)No.126 of 2019

Court and the same has to be kept in this case bundle.

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17.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

Mrn

To

1.The Principal Sessions Judge, Srivilliputtur, Virudhunagar District.

2.The Judicial Magistrate, Aruppukottai, Virudhunagar District.

3.The Superintendent of Prison,
Central Prison,
Madurai.

4.The Inspector of Police,
All Women Police Station,
Aruppukottai,
Virudhunagar District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL, J.



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Crl. R.C.(MD)No.126 of 2019

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Crl. R.C.(MD)No.126 of 2019

17.07.2023