



Crl.R.C.(MD)Nos.202 & 203 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)Nos.202 & 203 of 2019

1.Ayyappan ... Petitioner in Crl.R.C.(MD)No.202 of 2019

2.Velankanni ... Petitioner in Crl.R.C.(MD)No.203 of 2019

Vs.

State represented by
The Sub-Inspector of Police,
Vaniyampatti Police Station,
Virudhunagar District.
In Crime No.56 of 2008

... Respondent in both Crl.R.Cs.

COMMON PRAYER : Criminal Revision Cases filed under Sections 397 and 401 of the Code of Criminal Procedure, to set aside the conviction and sentence imposed by the Additional District and Sessions Court, Srivilliputtur in Crl.A.Nos.33 & 34 of 2010 on 13.02.2019 in confirming the conviction and sentence imposed by the Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in S.C.No.57 of 2009 on 10.03.2010 and allow these criminal revision petitions.



WEB COPY



Crl.R.C.(MD)Nos.202 & 203 of 2019

For Petitioners : Mr.M.Jothibas
(In both Crl.R.Cs.)

For Respondent : Mr.K.Sanjai Gandhi,
(In both Crl.R.Cs.) Government Advocate (Crl. Side)

COMMON ORDER

These criminal revision cases have been filed to set aside the conviction and sentence imposed by the Additional District and Sessions Court, Srivilliputtur in Crl.A.Nos.33 & 34 of 2010 on 13.02.2019 in confirming the conviction and sentence imposed by the Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in S.C.No.57 of 2009 on 10.03.2010.

2.The case of the prosecution is that the second accused kidnapped two victims and dragged them to her house and locked the house. Inside the house, A1 was there, who is an AIDS patient and he committed rape on them and also he threatened them that if they disclosed the same to anybody, he would kill them.



WEB COPY

3. On complaint, the respondent police registered FIR in Cr. No. 56 of 2008 for the offences under Sections 366(A), 376, 307 r/w 34 IPC. After completion of investigation, the respondent police filed final report and the same has been taken cognizance by the trial Court. On the side of the prosecution, they had examined P.W.1 to P.W.21 and marked Ex.P.1 to Ex.P.21. The prosecution also produced material objects M.O. 1 to M.O.3. On the side of the accused persons, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial Court found the first accused guilty for the offences punishable under Sections 376, 307 r/w 34 IPC and found the second accused guilty for the offences punishable under Sections 366(A), 307 r/w 34 IPC. The second accused was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo four months simple imprisonment for the offences under Section 366(A) IPC. The first accused was sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo four months simple imprisonment for the offence under Section 376 IPC. A1 and A2 were further sentenced to undergo 7 years rigorous



imprisonment each and to pay a fine of Rs.1000/- each in default to undergo four months simple imprisonment each for the offence under Section 307 r/w 34 IPC. Aggrieved by the same, the accused persons preferred separate appeals and the appellate Court, by a common judgment, set aside the conviction and sentenced imposed by the trial Court for the offence under Section 307 r/w 34 IPC and confirmed the conviction and sentence for the under Section 376 and 366(A) IPC. Aggrieved by the same, the petitioners preferred the present revisions.

4.The learned counsel appearing for the petitioner would submit that the first accused is suffering from AIDS and he is counting his days. Therefore, the sentence may be reduced. Insofar as A2 is concerned, she had already undergone three months imprisonment and as such, he is praying for reduction of sentence.

5.Per contra, the learned Government Advocate(Crl.side) appearing for the respondent police would submit that both accused persons committed very serious and heinous offences as against the victims. In fact, A1 had knowledge about illness suffered by A1 and



kidnapped the victims and wrongfully restrained in their house.

Thereafter, they were subjected for rape by A1. Only because of the said occurrence, both victims suffered by AIDS and in fact, one of the victim, who was examined as P.W.3, now died. He would further submit that the statement recorded under Section 164 Cr.P.C., was marked before the trial Court as Ex.P.11 and Ex.P.12. Victims parents were examined and they were categorically supported the case of the prosecution. Therefore, both the Court below rightly convicted and sentenced the petitioners herein and hence, he prayed for dismissal of these revisions.

6.Heard both sides and perused the materials available in the records.

7.It is seen that the petitioners are brother and sister. The second accused had very knowledge about the illness suffered by the first accused. Even then, she kidnapped both victims, namely P.W.3 and P.W.4 and subjected them to rape by A1. They were wrongfully restrained in their house. Due to the rape committed by A1, P.W.4 delivered a baby. Both victims were minor at the time of occurrence. On



perusal of statements of the victims revealed that both were subjected to rape by A1 with the help of A2. The mother of P.W.3 was examined as P.W.1 and she also categorically deposed that A1 committed rape on the victim with the help of A2. Therefore, both the Court below rightly convicted the petitioners herein for the offences punishable under Sections 376 and 366(A) IPC. Hence, this Court finds no infirmity or illegality in the order passed by the Courts below.

8.At this juncture, the learned counsel appearing for the petitioners would submit that A1 is counting his days and A2 already undergone three months imprisonment and therefore, he prayed for reduction of sentence.

9.Per contra, the learned Government Advocate(Crl.side) appearing for the respondent would submit that A1's whereabouts not known and he committed very serious and heinous offence and one of the victims died due to AIDS.

10.Considering the above submissions, this Court is not inclined to



CrI.R.C.(MD)Nos.202 & 203 of 2019

reduce the sentence imposed on the first accused by the Courts below and accordingly, criminal revision case in CrI.R.C.(MD)No.202 of 2019 is dismissed.

11.Insofar as A2 is concerned, considering her age and also period of incarceration already undergone by her, this Court is inclined to reduce the sentence alone. Accordingly, the sentence imposed by the Courts below on A2 is hereby modified as the period which she already undergone and criminal revision case in CrI.R.C.(MD)No.203 of 2019 is partly-allowed.

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns

To

- 1.The Additional District and Sessions Court, Srivilliputtur
- 2.The Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputtur
- 3.The Sub-Inspector of Police,

7/9



Crl.R.C.(MD)Nos.202 & 203 of 2019

Vaniyampatti Police Station,
Virudhunagar District.

WEB COPY

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



WEB COPY



Crl.R.C.(MD)Nos.202 & 203 of 2019

G.K.ILANTHIRAIYAN,J.

gns

Crl.R.C.(MD)Nos.202 & 203 of 2019

23.06.2023