

Nagaraj Vs. State

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Court : Chennai

Decided On : Jun-17-2014

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appellant : Nagaraj

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

17. 06.2014 CORAM THE HONOURABLE MRS. JUSTICE ARUNA JAGADEESAN CRL.A.No.438 of 2013 Nagaraj ..Appellant Vs State by Inspector of Police, All Women Police Station, Salem Town, Salem District. (Crime No.10 of 2008) ..Respondent Appeal filed under Section 374(2) Cr.P.C. against the judgment of conviction and sentence passed in S.C.No.225 of 2010 on the file of the learned Sessions Judge, Mahila Court, Salem, dated 27.03.2013. For Appellant : Mr.B.Vasudevan For Respondent : Mr.V.MR.Rajendran, Additional Public Prosecutor.

JUDGMENT

Challenge in this appeal is to the judgment of conviction and order of sentence passed by the learned Sessions Judge, Mahila Court, Salem, dated 27.03.2013 in S.C.No.225 of 2010 thereby convicting the appellant under section 376(i) IPC and

sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo one year simple imprisonment.

2. The gist of the case in a nutshell is as follows: i) The accused Nagaraj and the victim Kanniammal are the residents of Sivan Karadu, Sanniyasikundu, Salem City. The accused who is the neighbour of the victim girl, Kanniammal, had love affair with the victim girl and that from one year prior to the date of complaint i.e., from 06.05.2008, he has forced the victim girl to have sexual intercourse with him, promising to marry her. When the victim girl told him that she was pregnant, he has given her some pills and caused miscarriage of the foetus and asked her to marry somebody else and had eventually cheated and abandoned her. The accused has forced and induced the victim girl to have sexual intercourse with him in the first instance and several times thereafter promising to marry her. ii) On 06.05.2008, the victim Kannaiammal gave a complaint, Ex.P1 to the police. On receipt of the complaint Ex.P1, P.W.9- Inspector of Police, registered a case in Crime No.10 of 2008. P.W.9 prepared the F.I.R. Ex.P27. After obtaining Court's order, the victim girl and the accused were sent for medical examination. Thereafter, the victim girl gave birth to a male child. The DNA test was conducted for the accused as well as the victim girl and her male child and it was proved that the accused is the biological father of the male child Kavin born through the victim girl/P.W.1. After completion of investigation, a final report has been filed as against the appellant.

3. To substantiate the charges levelled against the accused/appellant, the prosecution examined 10 witnesses and marked 23 documents and no material objects were marked. On the side of the defence no witness was examined and no exhibits and no material objects were marked. The accused was questioned under section 313 Cr.P.C. as to the incriminating circumstances found in the prosecution case. He denied them as false. After hearing the arguments on both sides and on scrutiny of the available materials on record, the trial Court passed the judgment of conviction and order of sentence as stated above. Hence, this appeal at the hands of the appellant.

4. Learned counsel for the appellant submitted that the trial Court failed to note that the victim girl accepted the appellant and the appellant had sexual intercourse with her consent.

5. On the other hand, learned Additional Public Prosecutor had submitted that the victim girl was 16 years old at the time of occurrence and it cannot be said that there was an element of consent and therefore, the trial Court has rightly applied penal law and convicted the accused under section 376 IPC.

6. I have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

7. During the pendency of the appeal proceedings, the parties have entered into settlement and an affidavit has been filed by the victim girl stating that at the intervention of the elders, they have entered into compromise and in view of the said compromise, she has received a sum of Rs.50,000/- by way of demand draft on 10.4.2014 and on 03.06.2014, she had received a sum of Rs.1,00,000/- which she agreed to deposit the same in the name of minor child Kavin born to her through the appellant in fixed deposit in a nationalised bank at Salem. The victim girl appeared in person before this court and affirmed the facts stated by her in the affidavit dated 3.6.2014. She has also received the remaining Rs.50,000/- today (17.06.2014). Thus, in total, the victim girl had received a sum of Rs.2,00,000/- from the appellant. The victim girl has stated that she had deposited a sum of Rs.1,00,000/- in fixed deposit in the name of her minor Kavin. She would further state that she does not want to be further put to ignominy on account of this episode and she wants to put an end by settling the matter.

8. As discussed above, the victim girl was a consenting party and there is no conclusive evidence to prove that she was below 16 years at the time of occurrence.

9. Considering the compromise entered into between the parties and also taking into account that the victim girl wants to lead a peaceful and happy life, I am of the view that there is adequate and special reason to invoke the provision to section 376 IPC for imposing lesser punishment.

10. In the peculiar facts and circumstances of the case, in my considered opinion, this matter should be now given a quietus, particularly, when the alleged offence is stated to have taken place in 2008, almost 6 years ago. Therefore, I am of the view that while maintaining the conviction of the appellant as recorded by the court below, the sentence imposed on the appellant could be modified to the period already undergone by him.

11. In the result, i) The criminal appeal is partly allowed. ii) The judgment of conviction passed by the learned Sessions Judge, Mahila Court, Salem, in S.C.No.225 of 2010 dated 27.03.2013 as against the appellant, is confirmed, however, the sentence of 10 years rigorous imprisonment imposed on the appellant is reduced to the period already undergone by him. iii) The fine amount of Rs.1,00,000/- imposed by the trial Court is hereby set aside. iv) Bail bond, if any, executed by the appellant shall stand cancelled. v) Consequently, connected M.P.No.1 of 2013 is closed. 17.06.2014 vsi To 1. The Inspector of Police, All Women Police Station, Salem Town, Salem District.

2. The Public Prosecutor, High Court, Chennai. ARUNA JAGADEESAN,J.

Vsi CRL.A.No.438 of 2013 17.06.2014

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