

Thirupathi Vs. State By

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Court : Chennai

Decided On : Feb-26-2015

Judge : M.Sathyanarayanan

Appellant : Thirupathi

Respondent : State By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

26. 02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.32 of 2003 Thirupathi ... Appellant/Accused Vs. State by The Inspector of Police, Vadamadurai Police Station, Dindigul District. (Crime No.10 of 2000) ... Respondent/Complainant Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court, Dindigul in S.C.No.10 of 2002, dated 13.12.2002 and to set aside the same. !For Appellant : Mr.T.M.Madasamy ^For Respondent/state : Mr.C.Ramesh Additional Public Prosecutor :

JUDGMENT

In continuance of the orders dated 13.02.2015 and 17.02.2015, this Court is passing this order.

2. The sole accused in S.C.No.10 of 2002 on the file of the Court of Additional Sessions Judge/Fast Track Court, Dindigul is the appellant and he was charged for the commission of the offences under Sections 417 and 376 I.P.C. for having promised to marry P.W.1/victim and had a physical relationship. The trial Court, vide judgment dated 13.12.2002, has acquitted the appellant/accused, for the commission of the offence under Section 376 I.P.C., but convicted him for the commission of the offence under Section 417 I.P.C. and imposed the sentence of one year Rigorous Imprisonment and a compensation of Rs.25,000/- payable to P.W.1/victim under Section 357(3) Cr.P.C. The accused, aggrieved by the said conviction and sentence passed by the trial Court, has filed this Criminal Appeal.

3. When the Criminal Appeal was listed for hearing, it was brought to the knowledge of this Court that P.W.1/Victim, on account of the physical relationship, became pregnant and delivered a male child viz., Thirumoorthy, on 16.03.2000 and that she has also subsequently got married and also begotten a female child and however, the male child viz., Thirumoorthy is continuous to be in her custody only.

4. Mr.T.M.Madasamy, learned Counsel appearing for the appellant has filed an affidavit, dated 13.02.2015, wherein it has been stated among other things that the appellant/accused is also married and out of wedlock, begotten two female and one male children and apart from the compensation of Rs.25,000/- awarded by the trial Court, which has already been deposited, he is willing to pay further sum of Rs.25,000/- 5. This Court took note of the said submission and also the merits of the case.

6. On 17.02.2015, when the Criminal Appeal was listed for hearing, the appellant/accused has filed an additional affidavit dated 17.02.2015 and in paragraph No.3, he averred as follows: "3. I submit that I filed appeal before this Hon'ble Court in Crl.A.No.32 of 2003 and my sentence was suspended on 23.06.2003 in Crl.M.P.No.5247 of 2003 in Crl.A.No.32 of 2003. Now I am ready to take care of my child by name Thirumoorthy with respect to his education, his physical and mental health conditions. I am also ready to deposit money in the name of Thirumoorthy. I am ready to meet out all educational and other expenses

of Thirumoorthy till he attains majority. I will take all steps for the well being of Thirumoorthy considering him as one of my child."

7. This Court, taking note of the contents of the said affidavit, heard P.W.1/Victim, who was present along with her minor son viz., Thirumoorthy and she has stated that sufficient safeguards may be provided by the appellant/accused for the well being of the minor son and in the light of the same, this Court directed the appellant/accused to make a further deposit of Rs.25,000/- to the credit of S.C.No.10 of 2002 on the file of the Court of Additional Sessions Judge/Fast Track Court, Dindigul on or before 25.02.2015.

8. The appellant/accused in compliance of the said order dated 17.02.202015, today, has produced a receipt bearing No.0795420, dated 20.02.2015 depositing the further sum of Rs.25,000/- to the credit of S.C.No.10 of 2002 on the file of the Court of Additional Sessions Judge/Fast Track Court, Dindigul and also filed the original receipt and it is received and taken on record.

9. The appellant as well as P.W.1/Victim are personally present before this Court and the appellant/accused has reiterated his undertaking given in his additional affidavit dated 17.02.2015. P.W.1/Victim stated that in the light of the undertaking given by the appellant/accused and further that he has also made the additional deposit of Rs.25,000/-, the conviction and sentence passed under Section 417 I.P.C. may be compounded and appropriate orders may be passed.

10. This Court heard the submissions of Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State.

11. In the light of the above said developments, this Court is inclined to pass the following orders. (i) The Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused under Section 417 I.P.C. vide impugned judgment dated 13.12.2002 made in S.C.No.10 of 2002, by the learned Additional Sessions Judge/Fast Track Court, Dindigul, are set aside and the appellant/accused is acquitted of the said charge. The bail bond stands terminated and the fine amount, if any, paid by the appellant/accused shall be refunded to him. (ii) The trial Court is directed to deposit a sum of Rs.50,000/- (Rs.25,000/-

towards compensation and the additional amount of Rs.25,000/-) in an interest bearing recurring deposit in the name of Minor Thirumoorthy, S/o Thirupathy and Vellaiammal in any one of the Nationalised Banks at Dindigul and periodically renew the same, till the minor Thirumoorthy attains the age of majority on 16.03.2018 and on attainment of the majority, shall pay the amount directly to him.

(iii) The appellant/accused, in the light of the additional affidavit dated 17.02.2015, shall meet out the education and other expenses of minor Thirumoorthy and also his other essential needs, till he attains the age of majority. It is made clear that if the appellant/accused violates the terms of undertaking given in the additional affidavit dated 17.02.2015, it is open to the respondent/State as well as P.W.1/ Victim to move this Court for appropriate legal proceedings, including the proceedings under the contempt of Court. Index :Yes/No Internet :Yes/No 26.02.2015 ssl To 1.The Inspector of Police, Vadamadurai Police Station, Dindigul District.

2. The Court of Additional District and Sessions Judge, Fast Track Court, Dindigul.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

ssl Criminal Appeal (MD)No.32 of 2003 26.02.2015

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