

Manipur High Court

Shri Konsam Poirei @ Inaoton Singh vs The State Of Manipur on 18 June, 2021

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IN THE HIGH COURT OF MANIPUR

AT IMPHAL  
MC(Cril.Appeal) No.10 of 2019  
Ref:Criminal appeal No.16 of 2019

Shri Konsam Poirei @ Inaoton Singh, aged about 42 years, s/o K.  
Lukhoi Singh of Charangpat Maning Leikai, P.O., P.S. & District,  
Thoubal, Manipur-795138.

- Versus -

The State of Manipur.

BEFORE HON'BLE MR. JUSTICE M.V. MURALIDARAN For the Applicant/s : Mr.Kh.  
Tarunkumar, Advt.

For the Respondent/s : Mr.Y. Ashang, PP.

Date of hearing : 15.04.2021

Date of Judgment & Order : 18.06.2021

JUDGMENT & ORDER  
(CAV)

[1] This application for suspension of sentence has been preferred by

petitioner-appellant for suspending the sentence awarded to him by the Additional Sessions Judge (FTC) for Crime against Women, Manipur, vide its order dated MC( cri.appeal) No. 10 of 2019. Page 1 13.5.2019 passed in Sessions Trial (CAW) Case no. 15 of 2017, whereby the trial Court has convicted the petitioner-appellant for the offences punishable under Sections 417 and 376 IPC as under:

(a) 6 (six) months simple Imprisonment for the offence u/s 417 IPC.

(b) 10 years rigorous imprisonment for the offence u/s 376 IPC and to pay fine of Rs. 10,000/-, in default to undergo 6 months simple imprisonment.

[2] As per the prosecution story, the prosecutrix had lodged a written report on 20.9.2009 stating that she eloped with the petitioner-appellant on 17.09.2009 to be his wife, as the petitioner-appellant posed himself to be a divorcee having no wife and children. Later on, it was learnt that the petitioner-appellant had legally wedded wife and children, and the petitioner-appellant had coaxed her to have sexual intercourse and thereby committed rape. On the basis of the above written report, the Officer-in-charge of SJM police station, registered an FIR bearing No. 185(9)2009 under Sections 376/417 IPC against the petitioner-appellant. [3] After investigation, the police filed charge sheet against the petitioner-appellant under Sections 417 and 376 IPC. After committal, the trial Court framed charges against the petitioner-appellant for the offences punishable under Sections 417 and 376 IPC. After recording the prosecution evidence as well as the defence evidence, the trial Court has convicted the petitioner-appellant vide judgment dated MC( cri.appeal) No. 10 of 2019. Page 2 06.5.2019 and sentenced the petitioner-appellant to undergo the imprisonment as aforesaid vide order dated 13.05.2019. Challenging the conviction and sentence, the petitioner-appellant filed the criminal appeal and pending appeal, the petitioner-appellant sought suspension of sentence.

[4] The learned counsel for the petitioner-appellant has submitted that the trial Court has grossly erred in convicting and sentencing the petitioner-appellant for the offences punishable under Sections 417 and 376 of IPC. He would submit that the trial Court did not appreciate serious lapse committed by the investigating officer and that the investigating officer did not seize any clothes worn by the prosecutrix at the time of the alleged act of rape which was alleged to have been committed by the petitioner-appellant. In fact, the investigating officer has not visited the place where the act of rape/sexual intercourse was alleged to have been committed by the petitioner-appellant against her will. [5] The learned counsel further submitted that in her statement under Section 161 Cr.P.C. as well as Section 164 Cr.P.C. and even in her deposition before the trial Court, the prosecutrix stated that as she did not like the behaviour and nature of the petitioner-appellant, she stopped going to office of the petitioner-appellant, but on 17.09.2009, when Ms. Roji came to her residence and told her that the petitioner-appellant wants to meet her at her residence, without raising any objection she accompanied Ms.Roji to her residence to meet the petitioner-appellant. MC( cri.appeal) No. 10 of 2019. Page 3 appellant. According to the learned counsel, the aforesaid statement clearly shows that she voluntarily went to meet the petitioner-appellant and thereafter, from the residence of Ms.Roji at Sagolnand Sayang Pukhri Mapal, she without any objection accompanied the petitioner-appellant on his motorcycle to Tera. Further, from Tera she along with the petitioner-appellant went to the office Sub-Registrar, Imphal West for registration of their marriage and without any objection in front of the Marriage Officer, the prosecutrix voluntarily put her signature in the marriage register to become the wife of the petitioner-appellant. Thus, from the factual position, it is clear that the prosecutrix is a consenting party and everything was done with her full knowledge and consent.

[6] The learned counsel for the petitioner-appellant then submitted that the petitioner-appellant was very much ready to marry the prosecutrix and the said fact was clearly seen from his statement that both the petitioner and the prosecutrix went to the office of the Registrar of Marriage for registration of their marriage. [7] The learned counsel further submitted that the prosecutrix after elopement with the petitioner-accused on 17.09.2009 accompanied him without any protest from Tera up to Thoubal on his motorcycle. While they were staying at Thoubal Houkha, they were arrested by the police who came down from Singjamei police Station. Thus, it is clear that if the prosecutrix does not like the petitioner- appellant, she could have raised her voice while travelling from Tera to Thoubal, MC( cri.appeal) No. 10 of 2019. Page 4 but she did not do so. In fact, the prosecutrix went along with the petitioner- appellant with her own consent to become his wife and only after arrest by the police, she changed her mind being influenced the opinion of her family members and lodged the complaint and the trial Court failed to consider the aforesaid factual position in the impugned judgment.

[8] The learned counsel next submitted that if the petitioner-accused had the intention to marry the prosecutrix, no question of rape arises and since its inception the prosecution story has started with a false and fabricated complaint against the petitioner-appellant, and, therefore, the petitioner-appellant is entitled to be released on bail during pendency of the appeal to secure the ends of justice. [9] Per contra, the learned Additional Public Prosecutor submitted that the trial Court, after taking into consideration all the mitigating and aggravating circumstances, convicted the petitioner-appellant under Sections 417 and 376 IPC and sentenced him to undergo six months imprisonment under Section 417 IPC and ten years rigorous imprisonment under Section 376 IPC. He would submit that the trial Court was satisfied that the prosecution proved beyond reasonable doubt that the petitioner-accused had raped the prosecutrix by cheating on 17.09.2009 by posing himself as divorcee having no wife and children. Since the conviction and sentence are based on oral and documentary evidence, no question of suspending the sentence would arise and prayed for dismissal of the petition. MC( cri.appeal) No. 10 of 2019. Page 5 [10] This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record. [11] The trial Court convicted the petitioner-appellant for the offences punishable under Sections 417 and 376 IPC and sentenced him to undergo six months simple imprisonment for the offence under Section 417 IPC and ten years rigorous imprisonment for the offence under Section 376 IPC. [12] The case of the prosecution is that the prosecutrix eloped with the petitioner-appellant to be his wife, as the petitioner-appellant posed himself as a divorcee having no wife and children, and later on she learnt that the he had legally wedded wife and children. Further case of the prosecution is that when both were staying at the house of his relatives at Tera, the petitioner-appellant had sexual intercourse with the prosecutrix without her consent. [13] On the other hand, it is the case of the petitioner-appellant that the prosecutrix very well knew that the petitioner-appellant is a married man having children, however, she only compelled the petitioner-appellant for elopement and, accordingly, the prosecutrix eloped with the petitioner-appellant on 17.09.2019 and at about 4.00 PM, they proceeded to Sub-Registrar Office, Imphal West for registration of their marriage along with one advocate and konsam Sarat. At that time when the marriage Officer asked the prosecutrix whether the petitioner- appellant had wife and children, she replied that she knew that the petitioner- MC( cri.appeal) No. 10 of 2019. Page 6 appellant had wife and children and she was willing to marry him. Thereafter, both of them signed

in the marriage register book, but the registration was not completed due to lack of some documents.

[14] Admittedly, the said version of going to the Sub-Registrar Office for registration of the marriage and signing in the register have not been dispute by the prosecution. Therefore, the version of the prosecutrix that she did not know about the marital status of the petitioner, who had legally wedded wife and children is highly doubtful.

[15] It appears that along with appeal papers, the petitioner-appellant filed a copy of the affidavit sworn by the prosecutrix before the Oath Commissioner, Imphal West, wherein she has stated that in order to fulfil their mutual wish, she eloped with her lover Shri Konsam Poireiton Mangang (petitioner-appellant) on 17.9.2009 and to become his wife with her full consent and free will without inducement by any other persons and they married on same day i.e., 17.09.2009 as Keina Katpa marriage ceremony was performed at the residence of K.Sharatkumar Singh, Sagolband Khamnam Leirak, Imphal West. The petitioner- appellant also produced the copy of the register of marriage bearing Serial No. 106 of 2009, wherein both the petitioner and the prosecutrix names have been mentioned as husband and wife, however, the signature of the Registrar is found missing.

MC( cri.appeal) No. 10 of 2019. Page 7 [16] Since the elopement was on 17.09.2009 and the marriage is said to have been registered on the same day, it is highly doubtful whether the petitioner- appellant committed rape on the prosecutrix as alleged in the written complaint lodged by her while they are staying at the relative's house of the petitioner- appellant. Since the elopement was on her own volition and further on knowing that the petitioner-appellant was a married man, the version of the prosecutrix that the petitioner-appellant posed himself as a divorcee having no legally wedded wife and children is highly questionable. Anyhow, all these are merits of the appeal and the same cannot be gone into at the interim stage of considering the plea of suspension of sentence.

[17] Now the point that arises for consideration is whether the petitioner- appellant is entitled to grant of suspension of sentence as prayed for pending appeal.

[18] In the instant case, the petitioner-appellant challenged the judgment of the trial Court on various grounds as could be seen from the grounds of appeal. According to the petitioner-appellant, the trial Court failed to analyse the evidence of the petitioner-appellant, that the prosecutrix gave her consent to have sexual intercourse with the petitioner-appellant under the impression that he does not have wife and children and, in fact, she had knowledge that the petitioner-appellant had his wife, but was separated and married to some other person before they fell in MC( cri.appeal) No. 10 of 2019. Page 8 love. Admittedly, on a reading of the impugned judgment, the said aspect has also not been dealt with by the trial Court in proper perspective. Prima facie, nothing has been shown to the Court to substantiate the plea of the prosecution that by making a false promise, the petitioner-appellant had sexual intercourse with the prosecutrix.

[19] At this juncture, the learned counsel for the petitioner-appellant contended that the appeal would not be taken up for hearing in the near future and that the petitioner-appellant has to look

after his children and nobody is available to look after them.

[20] It is settled that when a convicted person is sentenced to a fixed period of sentence and the appellant Court finds that due to practical reasons that appeal cannot be disposed of expeditiously, it can pass appropriate orders for suspension of sentence.

[21] In *Bhagwan Rama Shinde Gosai and others v. State of Gujarat*, (1999) 4 SCC 421, the honorable Supreme Court held:

"3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter.

Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any MC( cri.appeal) No. 10 of 2019. Page 9 reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.

4. In This case as the High Court was not inclined to hear the appeal expeditiously we are of the view that the sentence passed on the appellants can be suspended on some stringent conditions. We, therefore, suspend the sentence and direct the appellants to be released on bail on each of them executing a bond to the satisfaction of the additional Sessions judge, Nadiad....."

[22] It is also settled that the sentence can be suspended in a case where there are reasonable grounds for believing that the accused is not guilty of the offence for which he is convicted and he is not likely to commit any offence during the period of suspension of sentence.

[23] In the instant case, as stated supra, the petitioner-appellant challenged the judgment of the trial Court on divers grounds as could be seen from the grounds of appeal and, prima facie, the petitioner-appellant has got an arguable case on merits, as the specific case of the petitioner-appellant that the prosecutrix accompanied him without raising any alarm on a motorcycle is not rebutted. The MC( cri.appeal) No. 10 of 2019. Page 10 fact that the accused and the prosecutrix were together located at a place by the police based on a missing complaint given by the parents of the prosecutrix also shows that there is more to it than meets the eye.

[24] The Hon'ble Supreme Court in the case of *Bhagwan Rama Shinde Gosai* (supra), held that the prayer for suspension of sentence pending appeal should be considered liberally unless there is any

statutory restriction. The law does not in any way affect the powers of the Court to grant parole and a sentence awarded under the relevant law can be suspended by the appellate Court. [25] Where an appeal is preferred against conviction and the sentence imposed under Section 376 IPC in the High Court, the High Court has ample power and discretion to suspend the sentence. That discretion has to be exercised judiciously depending upon the facts and circumstances of each case. That apart, while considering the suspension of sentence, each case has to be considered on the basis of the nature of the offence, the manner in which the occurrence had taken place, whether bail granted earlier had been misused. There was no straitjacket formula which could be applied in exercising discretion and the facts and circumstances of each case would govern the exercise of judicious discretion while considering an application filed by a convict under Section 389 Cr.P.C. Prima facie, in the case on hand, the petitioner-appellant has made out an arguable case on merits.

MC( cri.appeal) No. 10 of 2019. Page 11 [26] It is apposite to mention that the appeal is of the year 2019 and due to practical reasons, the appeal cannot be taken up in the near future and disposed of expeditiously. Taking into consideration the above facts and circumstances of the case, this Court feels that the challenge of the petitioner-appellant to his conviction for the offences punishable under Sections 417 and 376 IPC is based on strong grounds.

[27] In the light of the decision of the Hon'ble Supreme Court in the case of Bhagwan Rama Shinde Gosai (supra), and the fact that the present appeal would take substantial time to come up for final hearing, without expressing any opinion on the merits of the appeal, this Court is Inclined to suspend the sentence imposed on the appellant, subject to stringent conditions.

[28] Accordingly, this petition for suspension of sentence is allowed and it is ordered that the substantive sentence passed by the trial Court vide judgement date 13.05.2019 in Sessions Trial (CAW) Case No. 15 of 2017 against the petitioner-appellant shall remain suspended till the final disposal of the Criminal Appeal No.16 of 2019, provided the petitioner-appellant executes a personal bond in the sum of Rs.1,00,000/- (Rupees one lakh) with two sureties of Rs.50,000/- (Rupees Fifty thousand) each to the satisfaction of the trial Court and on an undertaking that he shall appear before the Court as and when ordered to do so, till the disposal of the aforesaid appeal on the conditions indicated below: MC( cri.appeal) No. 10 of 2019. Page 12 (1) That the petitioner-appellant will appear before the trial Court on the first working day of every month commencing from July, 2021 till the appeal is decided.

(2) That the petitioner-appellant shall not change the place of residence. Similarly, the sureties also shall not change the place of residence.

(3) That the amount of fine awarded by the trial Court, if not paid, shall be paid by the petitioner-appellant in the trial Court within one month from the date of receipt of a copy of this order.

(4) The trial Court shall keep the record of attendance of the petitioner- appellant in a separate file. Such file be registered as Criminal Miscellaneous Case related to original case in which the petitioner- appellant was tried and convicted. A copy of this order shall also be placed in that file for

ready reference. The said Criminal Miscellaneous Case shall not be taken into account for statistical purpose relating to pendency and disposal of cases in the trial Court.

(5) In case the petitioner-appellant does not appear before the trial Court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.

MC( cri.appeal) No. 10 of 2019. Page 13 (6) The petitioner shall not indulge in any criminal activities during the period of suspension of sentence.

(7) It is made clear that this Court has not delved into the merits of the appeal and the opinion expressed by this Court is, prima facie, and shall not prejudice the final hearing of the appeal in any manner.

JUDGE FR/NFR John kom MC( cri.appeal) No. 10 of 2019. Page 14