

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.594 OF 2022
(@ SLP (CRL.) NO. 7700 OF 2018)

SHAJAN

... APPELLANT

Versus

STATE OF KERALA & ANR.

... RESPONDENT

ORDER

Leave granted.

Application for impleadment is allowed.

1. The appellant before us was convicted for the offence punishable under Sections 376 and 493 of the Indian Penal Code (for short 'IPC') along with Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC/ST Act") by the trial court. It was challenged before the High Court which allowed the appeal in part by setting aside the conviction under Sections 376 and 493 IPC, while confirming the one imposed by the trial Court under the provisions of the SC/ST Act and thus, imposed a sentence of six months. Seeking to overturn the aforesaid decision, the present appeal by special leave has been filed.

2. Having found the prima facie case, we thought it fit to issue notice to hear the

prosecutrix/respondent No. 2 for consideration of not only the quantum of punishment as against the acquittal sought for, but also compensation if any. Unfortunately, despite notice having been served, she has chosen not to appear before us.

3. The learned counsel appearing for the appellant submitted that the reasons assigned by the High Court in rendering an order of acquittal against the offences charged under Sections 376 and 493 IPC, ought to have been extended to the remaining one under the SC/ST Act as well. It is not as if the appellant was in a position to dominate the will of the prosecutrix/respondent No. 2 and, therefore, there is no question of using that position to exploit her sexually. The fact that the agreement was registered between the parties itself would indicate that the parties fell apart due to a misunderstanding between them and, therefore, it is a mere case of two individuals leading separate lives. In any case, there is no criminality which could be attributed to the appellant for merely leaving the prosecutrix/respondent No. 2.

4. Learned counsel for the State submitted that the appellant left the relationship with the prosecutrix/respondent No. 2 only for the reason that she belongs to the depressed community. Therefore, Section 3(1)(xii) of the Act does get attracted.

5. We find considerable force in the submission made by the counsel for the appellant. It is an admitted fact that the parties, namely the appellant and the prosecutrix/respondent No. 2 were living together for quite some time. The factum of registration of Ext. P-1, being the marriage agreement, also indicates the agreed terms between the parties. It is nobody's case that the agreement was forced on the prosecutrix/respondent No. 2, as even the High Court was pleased to observe that it was done voluntarily.

6. Section 3(1)(xii) deals with a case of one party being in a dominant position, exerting such dominance on the will of a woman and thereafter, using it to exploit her sexually. The facts of the case do not attract the aforesaid provision as there is no evidence to suggest that the appellant was in a position to dominate the will of the prosecutrix and thereafter used it to exploit her sexually. We may usefully refer to a decision of this Court in the case of *Uday v. State of Karnataka, (2003) 4 SCC 46*.

7. In the light of the aforesaid discussion, we have no hesitation in setting aside the conviction and sentence rendered by the High Court of Kerala. Accordingly, the same stands set aside and the appeal stands allowed.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(M.M. SUNDRESH)

**New Delhi,
April 08, 2022**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No.7700/2018

(Arising out of impugned final judgment and order dated 26-07-2017 in CRL.A. No.373/2011 passed by the High Court of Kerala at Ernakulam)

SHAJAN

Petitioner(s)

VERSUS

THE STATE OF KERALA

Respondent(s)

(IA No. 131557/2018 - INTERVENTION/IMPLEADMENT)

Date : 08-04-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Ms. Anzu. K. Varkey, AOR

For Respondent(s) Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Mrs. Ashly Harshad, Adv.UPON hearing the counsel the Court made the following
O R D E RLeave granted.
Criminal appeal stands allowed in terms of the signed
order.

Pending application(s) stand disposed of.

(RASHMI DHYANI)
COURT MASTER(POONAM VAID)
COURT MASTER

(signed order is placed on the file)