

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.402 of 2014
and M.P.No.2 of 2014

V.Mohan

... Appellant

vs.

State Rep.by
The Inspector of Police,
All Women Police Station
Vridhachalam
Cuddalore District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and suspend the sentence of rigorous imprisonment of 7 years under section 376 IPC and Rs.5,000/- (Rupees five thousand only) in default to pay the fine amount to undergo one year rigorous imprisonment in Sessions case No.373 of 2009 by the District Mahila Court, Cuddalore dated 22nd July, 2014.

For appellant : Mr.C.Arun KUMar

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal has been directed against the conviction and sentence dated 22.7.2014 passed in Sessions Case No.373 of 2009 by the District Women and Sessions Court, Cuddalore.

2. The case of the prosecution is that the first accused by name Mohan by way of giving false promise of marrying the prosecutrix by name Punitha has deflowered her. The accused 2 and 3 have lent their support to the crime committed by the first accused. After occurrence, on 21.12.2008, the prosecutrix has given a complaint and the same has been registered in Crime No.21 of 2008. The complaint given by the prosecutrix has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.7 has conducted investigation and after completing the same, laid a final report on the file of District Munsif cum Judicial Magistrate Court, Thittakudi and the same has been taken on file in P.R.C.No.7 of 2009.

4. The District Munsif cum Judicial Magistrate, Thittakudi, after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Cuddalore Division and the same has been taken on file in Sessions Case No.37 of 2009 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents has framed first charge against the first accused under section 417, second charge against him under section 376 and third charge against the second and third accused under section 417 r/w 109 of Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 7 have been examined and Exhibits P.1 to P.9 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence, has found the first accused guilty under section 376 of IPC and sentenced him to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the first accused as appellant.

9. The learned counsel appearing for the appellant/first accused has repeatedly contended that both the first accused and prosecutrix have loved each other during the relevant period and only with her consent, the first accused has got cohabitation with the prosecutrix and further the prosecutrix has attained majority during the relevant period and the trial court without considering the aforesaid factual aspects, has erroneously found the first accused guilty under section 376 of IPC and therefore, the conviction and sentence passed by the trial court under the said section are liable to be set aside.

10. In order to remonstrate the contentions put forth on the side of the appellant/first accused, the learned Additional Public Prosecutor has contended that the prosecutrix has got birth only on 27.6.1993 and during the relevant period, she has attained only 15 years of age and under the said circumstances, even if she has given consent, the first accused can be mulcted with liability under section 376 of IPC and therefore, the trial court has rightly found him guilty under the said section and under the said circumstances,

the conviction and sentence passed by the trial court do not warrant interference.

11. The specific case put forth on the side of the prosecution is that during the relevant period, the prosecutrix has not attained majority. For the purpose of proving the said aspect, no document has been filed on the side of the prosecution.

12. During pendency of the present Criminal Appeal, on the side of the prosecution, a memo has been filed along with Transfer Certificate of the prosecutrix, wherein it is mentioned that the prosecutrix has got birth on 27.6.1993.

13. The learned counsel appearing for the appellant/first accused has contended that for the purpose of proving the contents of Transfer Certificate, relevant person has to be examined by way of giving sufficient opportunity to the accused.

14. At this juncture, the Court has to look into Section 391 of Code of Criminal Procedure, 1973, wherein it has been clearly mentioned that the appellate court is having unfettered right of getting additional evidence for the purpose of deciding the concerned matter.

15. In the instant case, as pointed out earlier, no document has been filed for the purpose of proving the date of birth of the prosecutrix. The trial court has simply believed the evidence of the prosecutrix with regard to her age. Since on the side of the prosecution, Transfer Certificate of the prosecutrix has been filed along with the memo, as rightly pointed out on the side of the appellant, the same can be marked only through relevant witness. The appellant/first accused is also having right of cross-examination. Under the said circumstances, this Court is of the view to direct the trial court to take additional evidence. Since this Court is of the view to direct the trial court to take additional evidence, the conviction and sentence passed by the trial court are liable to be set aside and the matter is liable to be remitted to the file of the trial Court.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellant/first accused in Sessions Case No.373 of 2009 by the trial court are set aside. The Sessions case No.373 of 2009 is remitted to the file of the trial Court. The fine amount as well as compensation paid by the appellant/first accused are ordered to be refunded forthwith. The trial Court is directed to take additional evidence. The accused are having right of cross-examination. The trial Court is directed to dispose of Sessions case No.373 of 2009 before the end of December 2015 and report the same to the Registry without fail. The accused are directed to make their appearance by 2.11.2015. If the appellant/first accused is in

custody, it is ordered to set him at liberty forthwith. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ajr

To :

1. District Mahila Court, Cuddalore
2. The Inspector of Police,
All Women Police Station
Vridhachalam
Cuddalore District.
3. The Prl Sessions Judge, Cuddalore.
4. The Addl. Sessions Judge, Mahila Court, Cuddalore.
5. The Superintendent of Police, Cuddalore.
6. The Public Prosecutor,
High Court, Chennai.
7. The Superintendent, Central Prison, Cuddalore.
8. The Asst. Registrar, T.N. Mediation & Conciliation Centre, High Court, Madras
9. The Member Secretary, T.N. State Legal Services Authority, Chennai,
10. The Director, Tamil Nadu State Judicial Academy, Green ways Road, Chennai.
11. The Secretary, High Court Legal Services Committee, Chennai.
12. The Section Officer, Criminal Section, High Court, Madras.

Crl.A.No.402 of 2014

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