

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.282 of 2015

Easak

... Appellant/Sole Accused

vs.

State rep. by the Inspector of Police,
W.16, All Women Police Station
Puliyanthoppu
Chennai 012

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 27.3.2015 made in S.C.No.108 of 2014 passed by Mahalir Sessions Judge under Prevention of Children from Sexual Offences Act, 2012, Chennai.

For appellant : Mr.P.Palani Nathan

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

JUDGMENT

This Criminal Appeal has been directed against the convictions and sentences dated 27.3.2015 passed in Sessions Case No.108 of 2014 by Magalir Sessions Court, Chennai.

2. The case of the prosecution is that the father of prosecutrix has passed away and subsequently, her mother has married the accused as her second husband. After attaining puberty, very often, the accused has caused sexual torture to the prosecutrix and on 7.3.2013, while the prosecutrix has been sleeping in the house of the accused, with an intention to have sexual intercourse with her, he uttered some filthy words. The further case of the prosecution is that the accused has also threatened the prosecutrix by way of saying that he would pour acid on her. After occurrence, the prosecutrix has herself given a complaint and the same has been registered in Crime No.1 of 2013. The complaint alleged to have been given by the prosecutrix has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.5 has conducted investigation, examined connected witnesses and after completing investigation, has laid a final report on the file of X Metropolitan Magistrate, Egmore, Chennai and the same has been taken on file in P.R.C.No.109 of 2013.

4. The X Metropolitan Magistrate, Egmore, Chennai, 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 trial court and the same has been taken on file in Sessions Case No.108 of 2014.

5. The trial court, after hearing both sides and upon perusing relevant records has framed the first charge under section 8 of Protection of Children from Sexual Offences Act, 2012, second charge under section 294(b), third charge under section 506(i) of Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 5 have been examined and Exhibits 1 to 3 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 8 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo 5 years Rigorous Imprisonment and also imposed a fine of Rs.3,000/-. Further, he has been found guilty under section 294(b) of IPC and imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has sparingly contended that in the instant case, the trial court court has framed the first charge against the accused under section 8 of Protection of Children from Sexual Offences Act, 2012 on the basis of materials found in the first charge. The Court cannot come to a conclusion that the appellant/accused has committed an offence mentioned in Section 7 of the said Act and the trial court without reading Section 7 of the said Act has erroneously framed the first charge and therefore, the entire convictions and sentences passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor has also equally contended that for invoking Section 7 of the said Act, physical contact is very much essential and in the first charge, no physical contact is mentioned and therefore, the trial court has erroneously framed the same.

11. For considering the rival submissions made on either side, the Court has to look into Section 7 of the said Act and the same reads as follows:

" 7. Sexual assault:- whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does nay other Act with sexual intent which involves physical contact without penetration is said commit sexual assault."

12. Even from a cursory look of the provisions of the said section, it is made clear that mere sexual intention is not sufficient and the same should be accompanied with physical contact. In the instant case, in the first charge, it has been simply mentioned that on 7.3.2013, while the prosecutrix has been sleeping, the accused has uttered some filthy words with intention to have sexual intercourse with her. Except the said aspects, in the first charge, no mention has been made with regard to physical contact. Therefore, it is needless to say that the accused cannot be said to have committed the offence mentioned in Section 7 of the said Act. Unless he committed the offence mentioned in Section 7 of the said Act, Section 8 of the said Act cannot be invoked. Therefore, it is quite clear that the first charge framed against the appellant/accused by the trial Court is totally erroneous and under such circumstances, the convictions and sentences passed by the trial court against the appellant/accused 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 convictions and sentences passed by the trial court in Sessions Case No.108 of 2014 are set aside and the matter is remitted to the file of the trial court. The trial court is directed to frame proper charges and also

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conduct trial afresh and pass judgment on merits. The fine amounts, if any, paid by the appellant/accused are ordered to be refunded. The appellant/accused is ordered to be set at liberty forthwith and also directed to make his appearance before the trial court by 30.11.2015.
ajr

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To :

1. Mahalir Sessions Judge
under Prevention of Children
from Sexual Offences Act, 2012,
Chennai.
2. The Inspector of Police,
W.16, All Women Police Station
Puliyanthoppu
Chennai 012
3. The Public Prosecutor,
High Court, Chennai
4. The Superintendent,
Central Prison, Puzhal, Chennai
5. The Principal Sessions Judge,
Chennai

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Cr1.A.No.282 of 2015

VG(CO)

sd : 29/10/2015

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