

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.492 of 2015

&

M.P.No.1 of 2015

Rajappan

...Appellant/Accused

vs.

The State rep. By
Inspector of Police,
All Women Police Station
Krishnagiri Taluk & District

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the order and judgment dated 29.4.2015 made in S.C.No.143 of 2014 on the file of Sessions Judge, Fast Track Mahila Court, Krishnagiri and call for records and acquit the appellant from all the charges.

For appellant : Mr.R.Karthikeyan for
M/s.Mukund R.Pandiyan

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

JUDGMENT

This Criminal Appeal has been directed against the conviction and sentence dated 29.4.2015 passed in Sessions Case No.143 of 2014 by the District and Sessions Court (Fast Track Mahila Court), Krishnagiri.

2. The case of the prosecution is that during May 2013, the prosecutrix by name Sindhumathi has proceeded to the house of her uncle by name Natarajan. At that time, the accused has lugged her and brought to his house and subsequently he deflowered her. After occurrence, step-mother of the prosecutrix by name Savitha has given

a complaint and the same has been registered in Crime No.5 of 2013. The complaint alleged to have been given by her has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Prosecuting Officer, viz., P.W.9 has taken up investigation, examined connected witnesses and also made arrangements to conduct medical examination both to the prosecutrix and accused and after completing investigation, laid a final report on the file of Judicial Magistrate Court No.2, Krishnagiri and the same has been taken on file in P.R.C.No.38 of 2013.

4. The Judicial Magistrate No.2, Krishnagiri, after considering the facts 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, Krishnagiri Division and the same has been taken on file in Sessions Case No.143 of 2014 and thereafter made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents has framed a charge under section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012 and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exhibits P.1 to 8 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 let in 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 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.50,000/- with usual default clause. Against the conviction and sentence passed by the trial court, present Criminal Appeal has been preferred at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has befittingly contended that the accused has faced a charge under

section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012, but the trial court, without altering the charge, has erroneously found the accused guilty under section 5(1) r/w 6 of the said Act and awarded 10 years rigorous imprisonment and in fact, the trial court has not followed Section 216 of Code of Criminal Procedure, 1973 and therefore, the conviction and sentence passed by the trial court are not factually and legally sustainable and the same are liable to be interfered with.

10. The learned Additional Public Prosecutor has fairly conceded that in the instant case, the accused has faced a charge under section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012, but the trial court without altering the charge and also without giving opportunity to the accused, has erroneously punished him under section 5(1) r/w 6 of the said Act and the approach made by the trial court is totally erroneous.

11. As adverted to earlier, the accused has faced a charge under section 3 r/w 4 of the said Act, but however, the trial court has found the accused guilty under section 5 (1) r/w 6 of the said Act, even without altering the charge already framed against him

12. At this juncture, the Court has to look into Section 216 of Code of Criminal Procedure, 1973 and the same reads as follows:

"216. Court may alter charge.

(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused

....."

13. Even a cursory look of the said provision, it is made clear that before pronouncing judgment, the Court is having ample power either to alter or add new charge. However, if any alteration or addition has been made, the same should be read and explained to the concerned accused.

14. In the instant case, as pointed out earlier, the accused has faced a charge under section 3 r/w 4 of the said Act, but without altering the original charge and also without giving sufficient

opportunity to the accused, the trial court has erroneously found him guilty under section 5(1) r/w 6 of the said Act. The approach made by the trial court is not factually and legally sustainable and on that ground alone, the conviction and sentence passed by the trial court are liable to be set aside and the matter is remitted to the file of the trial court.

15. In fine, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.143 of 2014 by the Sessions Judge, Fast Track Mahila Court, Krishnagiri are set aside and Sessions case No.143 of 2014 is remitted to the file of the trial court. Since conviction and sentence passed against the appellant/accused are set aside, he is ordered to be set at liberty forthwith. The trial court is directed to suitably alter the charge framed against the appellant/accused and give reasonable opportunity to him. The appellant/accused is directed to make his appearance before the trial court by 5.11.2015. The trial court is further directed to dispose of Sessions Case No.143 of 2014 before the end of February 2016 and report the same to the Registry without fail. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T&P)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. -Do- Through The Principal Sessions Judge,
Krishnagiri District.
3. Inspector of Police,
All Women Police Station
Krishnagiri Taluk & District

4. The Superintendent,
Central Prison,
Vellore.

5. The Public Prosecutor,
High Court, Chennai.

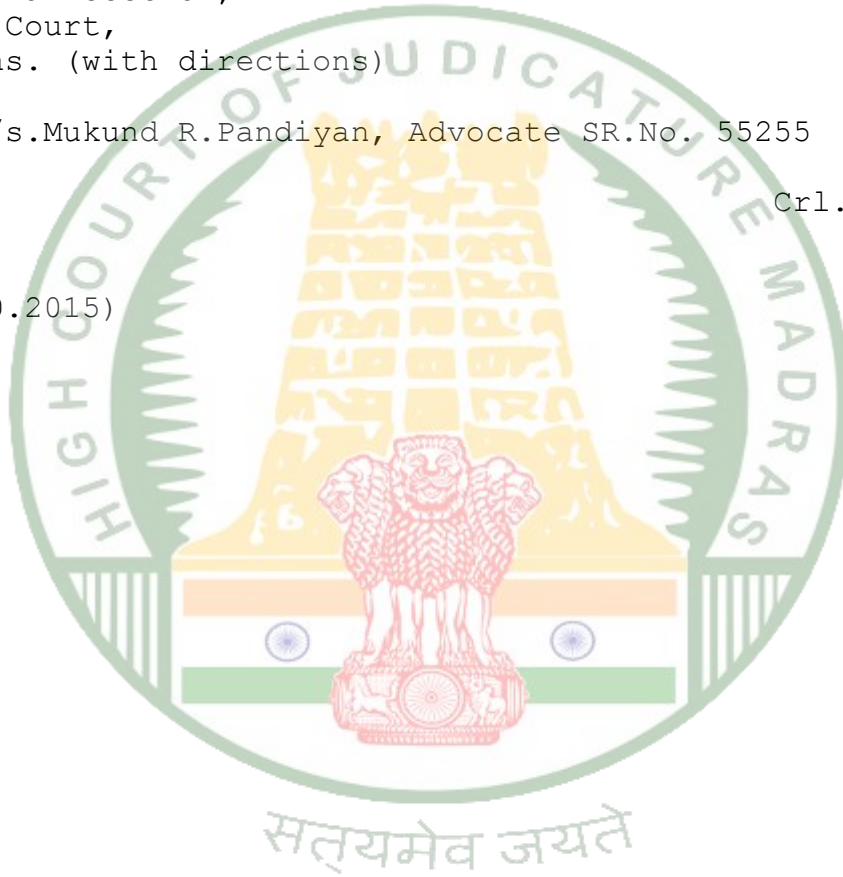
Copy to

The Section Officer,
Criminal Section,
High Court,
Madras. (with directions)

1 CC to M/s.Mukund R.Pandiyan, Advocate SR.No. 55255

Crl.A.No.492 of 2015

UG (CO)
PSI (12.10.2015)



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