

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

CRL.R.C.No.436 of 2016

1. Ethiraj
2. Raguman

... Revision Petitioners/Accused

Vs.

The State Rep. by
The Inspector of Police,
C-1 Flower Bazaar Police Station,
Chennai.

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the order passed by the III Additional Sessions Judge, Chennai in C.A.No.51 of 2015 dated 20.07.2015.

For Petitioners: Mr.S.Sugendran

For respondent : Mr.V.Arul,
Government Advocate (Crl. Side)

O R D E R

A1 and A2, in this revision challenges disposal of their Criminal Appeal in C.A.No.51 of 2015 by the learned III Additional Sessions Judge, City Civil Court, Chennai.

2. The revision petitioners were prosecuted in C.C.No.5151 of 2009 before the learned VIII Metropolitan Magistrate, George Town, Chennai. Ultimately, on 15.10.2015, they were convicted and sentenced as under :

A1 - Ethiraj

Sl. No.	Conviction	Sentence
1.	Under section 285 IPC	6 months S.I and fine Rs.1,000/- i/d 1 month S.I.
2.	Under Section 427 IPC	6 months S.I and fine Rs.5,000/- i/d 3 months S.I.

Sl. No.	Conviction	Sentence
3.	Under Section 304(A) IPC	1 year S.I. and fine Rs.10,000/- i/d 3 months S.I.

The sentences were directed to run concurrently.

A2 - Raguman

Sl. No.	Conviction	Sentence
1.	Under section 285 IPC	6 months S.I and fine Rs.1,000/- i/d 1 month S.I.
2.	Under Section 427 IPC	6 months S.I and fine Rs.5,000/- i/d 3 months S.I.
3.	Under Section 304(A) IPC	1 year S.I. and fine Rs.5,000/- i/d 3 months S.I.

The sentences were directed to run concurrently.

The Trial Court also directed them to pay compensation under section 357 Cr.P.C.

3. The convicted persons have preferred Criminal Appeal in C.A.No.51 of 2015.

4. On 20.07.2015, the learned Appellate Judge passed the following judgment :

"Accused Counsel present. Pass over 3.45 p.m. Appellants counsel absent. No representation on both sides. Sufficient time given. No representation. No progress. Appellants side counsel absent. Hence, the C.A. Is dismissed for default."

5. The aggrieved appellants have directed this revision.

6. Heard the learned counsel for the petitioners and the learned Government Advocate (CrI. Side).

7. Now the question is whether the disposal of the Criminal Appeal by default is in accordance with law. Whether the impugned judgment of the appellate Court suffers from any illegality.

8. Passing exparte judgment, exparte disposal, disposal by default are known in civil law, but unknown in criminal law. Suppose, if the appellant/accused simply adopts some tactics by showing his head and absenting himself, one day engages one advocate, next day engages another Advocate, then what the Trial Court or the Appellate Judge has to do.

9. Fair trial is a fundamental right under Article 21 of the Constitution of India. Fair trial will not end with the Trial Court, it continues in the appellate Court also, but in different form. A fair disposal requires giving fair hearing to both sides, namely, to the prosecution and to the defence. There cannot be a fair trial by one side hearing. Fair hearing requires giving of fair and reasonable opportunity to both sides and render the judgment on merits. Suppose, if an accused is dodging, employs certain tactics in the Court, simply absents himself and so also his counsel and in such circumstances, the Court has to tackle the situation.

10. There is no disposal of a criminal appeal by default. The Court has to keep in mind the plight of the accused and ensure a fair hearing to him, although, his lawyer had absented himself. Further, for the default of his lawyer, the accused cannot be penalised.

11. The Court must also see that on the hearing date, whether the attendance of the accused has been directed. If it is not so directed, when his lawyer does not appear, it will default of the lawyer and not the appellant. For the default/fault of a lawyer, an accused cannot be punished. Even if the appellant is present in the Court, his lawyer was not present in the Court, the Court cannot hear the appellant, who is not a lawyer. Hearing a non lawyer/ appellant is as good as hearing a deaf and dumb person. It will be against principles of natural justice.

12. In such circumstances, the Court should make endeavour to give legal representation, right of hearing to the accused through a lawyer. Because, he has such a right under 21 and 22(1) of the Constitution of India. This right is also available to an absentee accused/appellant also. In such circumstances, the Court shall appoint legal aid counsel to prosecute the criminal appeal.

13. Suppose, when a defence counsel dies, then the consequences will be different. His vakalat or memo of appearance comes to an end. In such circumstances, the appellate Court shall send notice to the accused to engage a fresh counsel to prosecute the criminal appeal.

14. Looking the matter in this perspective, I have no hesitation to hold that the judgment rendered without hearing the defence is not in order and it calls for our interference.

15. In view of the foregoing, Ordered as under :

1) This revision is allowed.

2) The impugned judgment passed by the learned III Additional Sessions Judge, Chennai in C.A.No.51 of 215 on 20.7.2015 is set aside.

3) The learned III Additional Sessions Judge, Chennai will restore the Criminal Appeal to his file.

4) The learned counsel for the appellants shall appear before said Court on 05.04.2016.

5) As this Criminal appeal is an old appeal, the learned III Additional Sessions Judge, Chennai shall make all out endeavour to dispose of the criminal appeal at an early date.

6) It is made clear that the learned counsel for the appellants and the learned Additional Public Prosecutor attached to the III Additional Sessions Court, Chennai will co-operate with the appellate Court in the quick disposal of this Criminal Appeal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To,

1. The Principal Sessions Judge,
Chennai.
2. The III Additional Sessions Judge,
Chennai.
3. The Additional Public Prosecutor,
High Court, Madras.

WEB COPY

4. The Inspector of Police,
C.1 Flower Bazaar Police Station,
Chennai.

5. VIII Metropolitan Magistrate,
George Town,
Chennai.

+1 cc to Mr.S.Sugendran, Advocate Sr.16671

Cr1.R.C.No.436 of 2016

ak(CO)
srg(29/03/2016)



WEB COPY