

Madras High Court

In Re: Roja Kamalam vs Unknown on 1 January, 1800

Equivalent citations: (1970) 2 MLJ 441

Author: B Somasundaram

ORDER B.S. Somasundaram, J.

1. One Roja Kamalam was convicted and sentenced to suffer rigorous imprisonment for three months for an offence under Section 380, Indian Penal Code, by the Sub-Magistrate, Ulundurpet in C.C. No. 1571 of 1969 on his file. The age of this accused was taken as 21 by the learned Magistrate. There was an appeal to the Sub-Divisional Magistrate, Ulundurpet, in C.A. No. 45 of 1969 and before him the appellant-accused produced a medical certificate to show that her age was about 20. While disposing of this appeal, the learned Sub-Divisional Magistrate confirmed the conviction and remanded the case to the Sub-Magistrate, observing that the matter should be dealt with under the provision of the Probation of Offenders Act, if the age was found to be 20.

2. There can be no remand of a case for the purpose of passing a proper sentence. Under Section 423 (1) (b) of the Criminal Procedure Code, the appellate Court has power to reverse the finding and sentence and either acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction. The conviction and sentence should be set aside before ordering a retrial. The procedure followed by the learned Sub-Divisional Magistrate is not correct. The order passed by him is set aside. He shall restore the appeal to his file and dispose of the matter according to law. The reference is accepted, the criminal case is allowed.