

State Vs. Rangaswami and ors.

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Court : Chennai

Decided On : Oct-08-1980

Reported in : 1981CriLJ694

Judge : S. Nainar Sundaram, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 397

Appeal No. : Crl.R.C. No. 83 and Cri.R.P. No. 82 of 1977

Appellant : State

Respondent : Rangaswami and ors.

Advocate for Def. : A.K. Kumaraswami, Amicus Curiae

Advocate for Pet/Ap. : M. Karpagavinayagam, Govt. Adv.

Judgement :

ORDER

1. This revision is by the State. The respondents herein are the accused in S.C. No. 129 of 1972 on the file of the Court of the Third Additional Assistant Sessions Judge, Coimbatore. The Assistant Sessions Judge convicted the accused under Section 395 read with S. 397 Indian Penal Code and sentenced A-1 to A-3 to two years' rigorous imprisonment and sentenced A-4 to A-6 to one years' rigorous imprisonment. The accused preferred an appeal from jail and the appeal C.A. No. 90 of 1973 was disposed of by the Sessions Judge, Coimbatore (West) Division and the Lower Appellate Court has confirmed the conviction and sentences of the first Court. In the present revision by the State, it is urged that the accused having been found guilty under Section 395 read with S. 397 Indian Penal Code, the minimum sentence of seven years prescribed under S. 397 Indian Penal Code ought to have been imposed and this error should be corrected now in revision by enhancing the sentence to the minimum prescribed. There is force in the case urged on behalf of the State. The judgment of the first Court was rendered on 24th February, 1973 and the judgment of the Lower Appellate Court was rendered on 24th July, 1973. The present revision by the State was filed on 22nd December, 1973 under S. 439 of the old Criminal Procedure Code. These factors, I am obliged to point out because though there is a warrant to correct the error committed by the first Court in not passing the minimum sentence, the time lapse cannot be lost sight of. The accused must have suffered and completed the sentence of imprisonment imposed on them long back.

2. It is true when the statute enjoins the courts to impose the minimum punishment, in

the absence of any saving clause in the statute itself, it is not open for the Courts to award a punishment lesser than the minimum one prescribed. Even as early as in 1928 in *Emperor v. Badhia* 1928 29 Cri LJ 35, a Division Bench of the Patna High Court dealing with the case under Section 397 of the Indian Penal Code held that a person convicted for an offence under that section cannot be sentenced for a period of imprisonment less than seven years, in *Bansi v. Emperor*, (AIR 1941 All 359) : (43 Cri LJ 97 : : AIR1941All359) a Division Bench of the Allahabad High Court discountenanced the plea that even though under Section 397 of the Indian Penal Code a minimum sentence of seven years has to be imposed, a sentence of less than seven years could be imposed on persons against whom it is impossible to prove that they used dangerous weapons themselves or caused grievous hurt.

3. The court is definitely enjoined with the duty to correct an error committed by the inferior Court when such Court flagrantly ignores the statutory provisions with reference to imposition of minimum sentence. The necessity and the reasons for correcting such errors have also been recognised by a Division Bench of Kerala High Court in *Subbayyan Muthukumaran v. State of Kerala* AIR1968 Ker 330 : 1968 Cri LJ 1554. The Supreme Court in *Supdt., Central Excise, Bangalore v. Bahubali* 1979 Mad LJ Cri 241 : (1979 Cri LJ 862) : : 1979CriLJ862 had discountenanced the application of the provisions of the Probation of Offenders Act when the Defence of India Act and the Rules framed thereunder specifically bars the exercise of judicial discretion in the matter of award of sentence. In an unreported judgment in *State v. Roskkan* (Criminal Appeal No. 757 of 1977). Paul, J. has adopted and applied the ratio enunciated by the Supreme Court in the above case, to a case arising under the Tamil Nadu Prohibition Act and the learned Judge corrected the error committed by the Court below in imposing a punishment other than the minimum one prescribed. The principles set out above cannot have an exception. In the present case, the accused who are the respondents though served, did not appear either by themselves or through counsel. By order dated 1st October, 1980 Mr. A. K. Kumaraswami, advocate of this Court was appointed as *amicus curiae* to represent the accused and assist the Court in the matter. The learned counsel has been of much assistance in explaining the position in law. Yet he would urge as pointed out earlier, that the time lapse will practically render any order enhancing the sentence, an unworkable proposition. The chances of apprehending the accused after the lapse of such a considerable time are remote. The first Court has committed an error in passing not the minimum sentence prescribed by law. The lower appellate Court was of course helpless. Apart from pointing out the impropriety and illegality committed by the first Court, I find that there is no useful purpose which will be served in exercising the powers of revision of this Court so as to enhance the sentence. With the above observations, this Criminal Revision stands dismissed.

4. Petition dismissed.