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Vidya Niwas Vs. State

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Court : Allahabad

Decided On : Mar-27-1952

Reported in : AIR1953All345

Judge : P.L. Bhargava, J.

Acts : Whipping Act, 1909 - Sections 3 and 378; Indian Panel Code, 1860 - Sections 379

Appeal No. : Criminal Revn. No. 295 of 1952

Appellant : Vidya Niwas

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : D. Sanyal and ;Sripat Narain Singh, Advs.

Judgement :
ORDER

P.L. Bhargava

1. The applicant, Vidya Niwas, has been convicted and sentenced to undergo rigorous imprisonment for one year under 8. 379, Penal Code ; and in addition to the punishment awarded to him under the Penal Code he has also been punished with whipping to receive 12 stripes under the Whipping Act. Against his conviction

and sentence, he preferred an appeal to the Sessions Judge oi Gorakhpur. The appeal was heard by the Additional Sessions Judge of Gorakhpur, who upheld the conviction as well as the sentences imposed upon the applicant. Now, the applicant has filed this revision. The revision was admitted on the question of sentence only.

2. It has been argued on behalf of the applicant that the sentence imposed upon the applicant is not only excessive but it is also illegal. The sentence imposed upon the applicant is said to be illegal, inasmuch as in addition to the sentence of imprisonment under the Penal Code, punishment of whipping has also been imposed, in direct contravention of the provisions of Section 3, Whipping Act which lays down :

'3. Whoever commits any of the following offences, namely :

(a) theft, as defined in Section 378, Penal Code other than theft by a clerk or servant of property in possession of his master ;

(b) theft in a building, tent or vessel, as defined in Section 880 of the said Code ;

(c) theft after preparation for causing death of hurt, as defined in Section 382 of the said Code ;

(d) lurking house-trespass; or house-breaking, as defined in Sections 443 and 445 of the said Code in order to the committing of any offence punishable with whipping under this section ;

(e) lurking house-trespass by night, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section ;

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.'

3. The applicant having been found guilty of an offence of theft, as defined in Section 378, Penal Code, he could not, therefore, have been punished with whipping in addition to the sentence of imprisonment. In view of the provisions

contained in Section 3, Whipping Act, the punishment of whipping could have been awarded only in lieu of the punishment to which the applicant was otherwise liable.Section 4 of the Whipping Act makes a provision for the imposition of the punishment of whipping in lieu of or in addition to any other punishment to which any accused may be liable : but that is permissible only when any of the offences mentioned in that section are committed. The offence of theft is not one of the offences mentioned in Section 4 of the Whipping Act.

4. Consequently, the applicant could not have been punished with whipping in addition to imprisonment awarded under Section 379, Penal Code. The imposition of the punishment under the Penal Code as well as under the Whipping Act is, therefore, illegal.

5. Learned counsel for the applicant has contended that the sentence of one year's rigorous imprisonment, imposed upon the applicant under Section 379, Penal Code, is excessive ; and that, in the circumstances of the case only the punishment of whipping may be maintained. The applicant was found picking the pocket in a crowd which had collected at the window of the hooking office of a cinema hall. It further appears from the evidence, on the record that the applicant is a history-sheeter and had been under the surveillance of the police. Having regard to the nature of the offence committed by the applicant, I am not prepared to accept the suggestion that the applicant should only be punished with whipping. The sentence of one year's rigorous imprisonment, in the circumstances of the case, however, does appear to be excessive : and I reduce it to a period of six months. The sentence under the Whipping Act is set aside. Subject to this modification, the revision is rejected.

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