

Kavi @ Stalln Vs. State

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Court : Delhi

Decided On : Jan-17-2004

Reported in : 2004CriLJ1652; 2004(72)DRJ524

Judge : Vikramajit Sen, J.

Acts : Indian Penal Code (IPC) - Sections 34, 304 and 397; Arms Act; [Constitution of India](#) - Article 39

Appeal No. : Crl Appeal Nos. 511 and 514/1999

Appellant : Kavi @ Stalin

Respondent : State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : M.A. Chinnasamy, Adv

Disposition : Appeal allowed

Judgement :

Vikramajit Sen, J.

1. By this common Order I shall dispose of both the Criminal Appeals together.

2. In Criminal Appeal No.511/99 the Appellant was charged under Section 307/34 IPC and FIR No.114/1998 was registered. He was convicted by the Sessions Judge and sentenced to imprisonment of five years with a fine of Rs.2,000/-, in default a further period of three months rigorous imprisonment. In Criminal Appeal No.514/1999 the Appellant was charged under Section 394/34, 307/34, 397 IPC and Section 25 of the Arms Act and FIR No.169/1998 was registered. He was convicted by the Sessions Judge and sentenced to imprisonment for five years with a fine of Rs.2000/-, in default a further period of three months rigorous imprisonment.

3. On appeal before this Court, the matter was remanded to the Sessions Judge to determine the age of the Appellant. The Sessions Judge in his report dated 24.1.2000 has recorded the following conclusions and findings:-

"In view of the evidence discussed above, the finding is given that at the time of commission of offence on dated 7.3.1998 in case FIR No. 114/1998 and the date of the commission of the offence on dated 10.4.1998 in case FIR No. 169/1998 which are curtail date accused Kavi @ M. Stalin was about 14 years"

4. Reliance has been placed on Gopi Nath Ghosh v. State of West Bengal 1984 SCC 228. The Hon'ble Supreme Court had firstly voiced its concern about the failure to raise any objection as to the age of the accused in the Courts below. The Apex Court took note of the provision of Article 39(f) of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The Hon'ble Supreme Court thereafter set aside the conviction and sentence. In the present case the same path must be traversed by this Court. Accordingly, the conviction and the sentence of the Appellant are set aside as unsustainable. The Appeals are allowed.

5. Before departing from the case it would be necessary to extract the directions of the Hon'ble Supreme Court so that they are meticulously followed by all Criminal Courts.

"We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining creditworthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey up to the Apex Court and the return journey to the grass-root court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated".

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