

In Re: Munuswamy

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Court : Chennai

Decided On : Mar-18-1947

Reported in : AIR1947Mad386; (1947)1MLJ336

Appellant : In Re: Munuswamy

Judgement :

Yahya Ali, J.

1. The appellant has been convicted by a Special Honorary Presidency Magistrate under Section 379 read with Section 75 of the I.P.C. and sentenced to two years' rigorous imprisonment. The Magistrate has further directed that out of that period, one month should be passed in solitary confinement.
2. This is a simple case of theft. P.W. 1, a weaver in the Buckingham and Carnatic Mills, was, after receiving his pay, coming home. On the way he stopped at a shop and bargained for a ready-made shirt. At that place the appellant is said to have removed from P.W. 1's pocket some currency notes which represented his salary. He was immediately caught and handed over to the police with the currency notes.
3. The appellant admitted the offence and pleaded guilty to the charge under Section 379 as well as to the charge under Section 75 of the Penal Code. The only question therefore is as to the sentence. In a case of this kind which does not contain any circumstances whatever of an aggravating nature the ordinary sentence would have indeed been very light. There is however the fact that the

appellant has been convicted under Section 379, I.P.C., on several occasions before and the last conviction was on the 4th January, 1945, when he was sentenced to undergo rigorous imprisonment for two years. It has been held in a number of decisions by this Court that although the fact of previous convictions is an element in determining the sentence, essential regard should be had to the facts of the case, the gravity of the offence and the circumstances in which it was committed in assessing the punishment and the mere circumstance that there were previous convictions should not result in the infliction of a sentence that is far out of proportion to the merits of the main case. In the present case taking into account all the previous convictions and the circumstances of the case, I am definitely of the view that a sentence of rigorous imprisonment for one year would more than meet the ends of justice.

4. As regards the sentence relating to solitary confinement, the attention of the Magistrate is invited to my judgment in Criminal Appeal No. 114 of 1947. As pointed out in that Judgment, although the imposition of the sentence of solitary confinement was legal, under the Larceny Act of 1861 (24 and 25 Victoria, Chapter 96) the power was very rarely exercised by a Criminal Court. By enacting 56 and 57 Victoria Chapter 54, on 22nd September, 1893, the provisions in the Larceny Act relating to solitary confinement, which had become obsolete for several decades by that date were formally repealed. A century of experience has thus led to its abandonment in the United Kingdom and at the present day it stands condemned and has generally given place to work in association during the day and confinement in cell for the night, in cases where isolation at night is considered necessary for a brief time for particular prisoners and exclusively for the maintenance of prison discipline. Although in the medieval times under the influence of the ecclesiastics it was considered that cellular confinement was a means of promoting reflection and penitence, it came since to be realised that this kind of treatment leads to a morbid state of mind and not infrequently to mental derangement and as a form of torture it fails in its effect on the public. It must therefore, so long as it is part of the Indian Penal Code, be administered, if ever, in the most exceptional cases of unparalleled atrocity or brutality. The sentence of rigorous imprisonment is reduced to one year and the sentence of solitary confinement is set aside.

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