

State Vs. Savithiri and ors.

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Court : Chennai

Decided On : Aug-01-1974

Reported in : 1976CriLJ37

Judge : Kailasam and; Varadarajan, JJ.

Appellant : State

Respondent : Savithiri and ors.

Judgement :

ORDER

1. This revision petition is filed by the Public Prosecutor against the sentence passed by the learned Sessions Judge of Thanjavur for an offence under Section 120-B, I. P.C. (Part I). Accused 1 to 3 were found guilty of an offence punishable under Section 302 read with Section 34, I. P.C. and were each sentenced to undergo imprisonment for life. The learned Sessions Judge also found accused 1 to 3 guilty of an offence punishable under S. 302 read with Section 109, Indian P. C, but did not impose any separate sentence in respect of that conviction. He found accused 1 to 3 guilty of the offence punishable under Section 120-B, I. P.C. (Part I) and sentenced each of them to undergo rigorous imprisonment for two years. The accused were also convicted of other charges, which need not be referred to.

2. The learned Public Prosecutor submitted that under Section 120-B of the Indian Penal Code, a party to a criminal conspiracy to commit an offence punishable with

death or imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. Section 109 of the Indian Penal Code provides that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by the Code for the punishment of such abetment be punished with the punishment provided for the offence. Reading Sections 120-B and 109 together it is clear that when the act abetted is committed in consequence of the abetment, the accused shall be punished with the punishment provided for the offence abetted. As the offence is murder, the punishment can only be death or imprisonment for life. The lower court was in error in inflicting the sentence of rigorous imprisonment for two years for the offence under Section 120-B, (Part I) read with Section 302, I. P.C. But, as the accused have been found guilty and convicted of an offence under Section 302 read with Section 34, I. P.C. and sentenced to imprisonment for life and no separate sentence has been awarded to them for the conviction under Section 302 read with Section 109, I. P.C. no conviction or sentence under the charge for the offence under Section 120-B, I. P.C. need be recorded. In this view, the sentence under Section 120-B, I P.C. (Part I) imposed by the learned Sessions Judge the legality of which is challenged is set aside.

3. The learned Public Prosecutor is right in his contention that the sentence imposed under Section 120-B, I. P.C. is illegal. The Revision Petition is ordered accordingly.

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