

State of T.N.

Vs

M. K. Moorthi

Criminal Appeals Nos. 40 & 56 of 1975

(Kuldip Singh, K. Ramaswamy JJ)

20.11.1990

JUDGMENT

1. M. R. Moorthy and 36 others (hereinafter referred to as A. 1 to A. 37) were tried for an offence under S. 40 1, Indian Penal Code on-the charge that they associated themselves into a gang for the purpose of committing theft and they habitually committed thefts of idols from the Temples. The Trial Court by its judgment dated September 9, 1970 convicted and sentenced A. 1 to A.4 to four years, A 5 to A.8 to six years and A.9 to A.11, A.23, A.24, A.30 and A.31 to three years rigorous imprisonment respectively. A. 12 to A.22, A.25 to A.29, A.32 to A.37 were acquitted by the Trial Court. Against the conviction and sentence the accused persons filed appeals before the High Court which we-re heard by Krishnaswamy Reddy, J. and by a detailed judgment running into 321 pages the learned Judge set aside the conviction and sentence of A.1 to A.4, A.8, A.23, A.24 and A.30. The learned Judge upheld the conviction of A. 5 to A. 7 and A. 9 to A. 11 but reduced the sentence of imprisonment in their case to two years rigorous imprisonment. The State filed appeals against the acquittal of A.34 and A.35 which were dismissed by the High Court.

2. Criminal Appeal No. 56 of 1975 via special leave petition is by the State against the acquittal of A.1 to A.4, A.8, A.23, A.24, A.30, A.34 and A.35. The State has also come up in appeal for enhancement of sentence in respect of those whose conviction was upheld by the High Court. Criminal Appeal No. 40 of 1975 is by A.5, A.6, A.7 and A. 10 against their conviction as upheld by the High Court.

3. We have been taken through the judgment of the High Court and various other documents on the record. The High Court has meticulously checked out material against each one of the accused persons and has appreciated the evidence with such precision and clarity that no fault at all can be found with the same. Mr. Krishnamurthy, learned counsel for the State of Tamil Nadu has not been able to point out any legal infirmity in the judgment of the High Court. He, however, contends that there is sufficient material on the record to convict the accused persons for offences pertaining to possession of stolen property. The only charge framed against the accused persons was under S. 401 of the Indian Penal Code. There was no alternative charge against them. The point was not canvassed at any stage before the courts below. Even otherwise no material has been brought to our notice to show that any of the acquitted-persons were in possession of the istolen idols with the knowledge that the same were stolen rather the findings of the courts below are to the contrary. There is thus no merit in the contention of the learned counsel.

4. We agree with the appreciation of evidence and the conclusions reached by the High Court and

dismiss both the appeals. Mr. A.T.M. Sampath, learned counsel on instructions has informed us that A. 1 - Shri M. R. Murthy has since expired. The Office record further shows that A.24 -- Shri Rajangam has also expired. The appeals against them have abated in addition.

5. In the Criminal Appeal No. 40/ 1975, the appellants are already on bail under orders of this Court. We direct that they should surrender their bail bond to undergo the remaining sentence of imprisonment, if they have not already undergone two years of rigorous imprisonment awarded by the High Court.

Order accordingly.

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