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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.9 of 2014
and
CrI.M.P.No.266 of 2016

Jagir Basha

... Appellant/Accused 3

Versus

State: Rep. by
Inspector of Police,
Thuraipakkam Police Station,
Chennai

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C to set aside the Judgment and Conviction passed in S.C.No.115 of 2009 on the file of the learned Assistant Sessions Judge, Tambaram dated 08.06.2011.

For Appellant : Mr.K.Gajendran

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

A3 in the Sessions Case in S.C.No.115 of 2009 on the file of the learned Assistant Sessions Judge, Tambaram is the appellant.

2. A3 and certain others were alleged to have committed robbery in P.W.1's house.

3. The trial Court tried him for charges under Section 451 and 395 r/w 397. A3 has been convicted and sentenced as detailed below:

Conviction	Sentence
(i) Section 451 IPC	(i) 5 years R.I
(ii) Section 395 r/w 397 IPC	(ii) 10 years R.I



5. The learned counsel for the appellant would mainly contend on the aspect of severity of sentence. Even as per the final report, A3 was 18 years old. Now, he has spent 10 years in jail. No previous conviction has been proved against him. The accused has to be in jail, still 5 years.

7. The accused is not challenging the conviction, his main grievance is severity of the sentence.

9. A criminal court's Judgment has got two parts, first part is recording of conviction. It is based on the appreciation of evidence and ascertainment of fact based on recording of evidence and conviction based on the section of penal law. This part is called conviction part. 10. The next part is awarding of punishment. Both parts are called crime and punishment/sentence. They are crime and punishment. 'Punishment' cannot be inter-changed for 'crime'. Crime and punishment may be one after the other, but they are not one and the same.

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One cannot be doomed for ever. 'Just as a past behind a saint, a Sinner too has a future'. This is the basis for reformatory theory of punishment. Retributive justice is vengeful in nature.

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12. There is no charge under Section 75 IPC against A3 for proving previous conviction against him. This is a fit case to dilute the rigour of the sentence. We are on the point of quantum of sentence. The appellant/A3 is young. Already spent about 10 years in jail. 10 years in one's part of life is too long a period. 10 years far away from the family and society in jail would be unbearable.

13. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant under Sections 451 and 395 r/w 397 IPC by the learned Assistant Sessions Judge, Tambaram are confirmed. Both the sentences shall run concurrently. The accused shall be given set off under Section 428 of Cr.P.C. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Sessions Judge,
Tambaram.
2. The Principal District and Sessions Judge,
Chengalpattu.
3. The Judicial Magistrate,
Chengalpattu.
4. Do Through The Chief Judicial Magistrate,
Chengalpattu.
5. The District Collector/District Magistrate,
Kanchipuram.
6. The Inspector of Police,
Thuraipakkam Police Station,
Chennai



7. The Superintendent,
Central Prison,
Puzhal, Chennai.

8. The District General of Police,
Mylapore, Chennai 04.

9. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Gajendran, Advocate, S.R.No.21165

Cr1.A.No.9 of 2014

AD(CO)
CA(26/04/2016)