

Augustinju Anthrayose Vs. State

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Court : Kerala

Decided On : Feb-26-1951

Reported in : 1954CriLJ684

Judge : Kunhi Raman, C.J. and; Subramania Iyer, J.

Appellant : Augustinju Anthrayose

Respondent : State

Judgement :

Kunhi Raman, C.J.

1. The 12th accused is the appellant. The learned Judge has found that he is liable on the ground of constructive responsibility for offences committed by certain other members of the unlawful assembly because he was found at the place of meeting. He has also found that he is guilty under Section 456, Travancore Penal Code because he committed house-breaking by entering the house where P. W. 2 was hiding and assaulted him. There was no charge of assault framed against this accused. Therefore, the learned Judge accepted the evidence of P. W. 16 and has recorded a finding that he committed house-breaking under Section 456. But P. W. 2 himself does not mention the name of the 12th accused as one of the persons who broke into the room where he was hiding. He said in his evidence that he knows the names of the people who had entered the room by breaking open the door and in the list given by him in his evidence the name of the 12th accused

does not find a place. Therefore, we cannot support the conviction of the 12th accused under Section 456, Travancore Penal Code, there being an obvious conflict between the evidence of P. W. 2 the actual victim of the assault, and that of P. W. 16 who is the only witness who has spoken about the house breaking.

2. We accordingly set aside the conviction and sentence under Section 456. If this is set aside, the only offence against the 12th accused is that he was present at the first scene mentioned in the judgment of the learned trial Judge. The learned Public Prosecutor points out that there is also evidence to show that he was found at scenes 2, 3 and 7 as well. But his mere presence may be as an onlooker and there is no justification for saddling him with constructive liability on the ground that he was seen in the locality. His conviction and sentence must accordingly be set aside and he shall be set at liberty.

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