

In Re: Vasudeva Mudali and ors.

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Court : Chennai

Decided On : Mar-11-1929

Reported in : 118Ind.Cas.68; (1929)57MLJ114

Appellant : In Re: Vasudeva Mudali and ors.

Judgement :

1. This appeal relates to an occurrence arising out of the strike on the Section 1. Ry. in July last. All of the seven appellants have been convicted of offences under Section 147 of the Indian Penal Code and Section 127 of the Railways Act. The first appellant has been further convicted of an offence under Section 128 of that Act and the other appellants have been convicted of the same offence with reference to Section 149, Indian Penal Code.

2. The first objection taken is that the word 'offence' in Section 149 being confined to offences under the Penal Code, the conviction of the second to seventh appellants under Section 128 of the Railways Act with reference to that section is illegal. That has been held in *Aydrooss v. Emperor* (1922) 17L.W. 21 and *In re Puvanur Athawnu* (1924) 20 L.W. 914. We have considered the question at length and with care and find ourselves constrained to say that those decisions are right. The position is curious and unsatisfactory. A large body of men set out to obstruct a railway line and to throw stones at trains. They form an unlawful assembly; for by Section 40 of the Penal Code, the word 'offence' in Section 141 includes offences under any special law. If, however, the rioters proceed to carry out their common object and to commit offences under Sections 127 and 128 of the Railways Act,

you can convict only those of them who are proved themselves to have committed those offences. The rest are not constructively guilty, as Section 149 cannot be invoked against them although the offences committed are the very offences they set out to commit and were committed in prosecution of their common object.

3. This being the legal position we must acquit the second to seventh appellants on the second count of the indictment. The third count which relates to the charge under Section 127 of the Railways Act has also been framed with reference to Section 149, Indian Penal Code. All of the appellants must be acquitted on it also. As regards the charge of rioting, there is ample evidence to connect all of the appellants with the unlawful assembly and the convictions on that charge must be sustained. There is also plenty of evidence that the first appellant committed an offence under Section 128 of the Act. This conviction must be confirmed.

4. The result is that the sentences of six months' rigorous imprisonment passed on all of the appellants under Section 147, Indian Penal Code, are confirmed. The sentences passed on the second to seventh appellants under Sections 127 and 128 of the Railways Act are set aside: The sentence passed on the first appellant under Section 128 of the Railways Act is confirmed and it will run concurrently with the other sentence passed on him. The sentence passed on him under Section 127 of the Railways Act is set aside. The fourth to seventh appellants will be recommitted to serve the unexpired portion of their sentences.

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