

In Re: Cholancheri Ayammad and ors.

In Re: Cholancheri Ayammad and ors.

SooperKanoon Citation : sooperkanoon.com/774755

Court : Chennai

Decided On : Jan-08-1923

Reported in : AIR1923Mad600; (1923)44MLJ557

Appellant : In Re: Cholancheri Ayammad and ors.

Judgement :

1. The nine appellants in this case have been convicted of an offence under Section 121, Indian Penal Code, and sentenced to transportation for life. They are said to have formed part of a body of some 3,000 Moplahs who marched on Tirurangadi Cutcherry on 20th August 1921. A small body of police under two European Officers endeavoured to bring them to a stand and the two officers with two headconstables advanced, to parley with the Moplahs. They were treacherously surrounded and murdered by the vanguard of the Moplahs consisting of about 100 armed men including the present appellants and the small police force was driven to retreat. This was the encounter which inaugurated the Moplah rebellion and there can be no doubt that if the evidence is accepted all those who took part in the attack on the police were guilty of an offence under Section 121 Indian Penal Code (waging war against the King).

2. A preliminary objection was taken by Mr. Ethiraj on behalf of the appellants that the sanction order (Ex.A.) required by Section 196 Criminal Procedure Code has not been properly proved. The order purports to be signed by Mr. R. A. Graham as Chief Secretary to Government and it is argued that the genuineness of his signature should be proved by evidence. It appears to have been the custom in

cases of this nature to examine a witness to speak to the genuineness of the Chief Secretary's signature; but the learned Public Prosecutor points out (and in our opinion rightly) that under Section 57(7) of the Evidence Act, the Court can take judicial notice of this Officer's signature just as of his accession to office, name, title and functions and the genuineness of his signature is not a matter which unless the court deems it necessary need be proved.

3. To this Mr. Ethiraj replies with reference to the closing words of Clause (7) that its applicability is contingent on the exhibition of a copy of the Fort Saint George Gazette containing a notification of Mr. Graham's appointment as Chief Secretary.

4. We do not think this is the intention of the section. All that appears to be meant is to limit the application of the clause to what is known as 'Gazetted Officers' that is, Officers whose appointments are notified in the Gazette of India or Local Government Gazette. Of course if there is any question or doubt as to whether the Officer of whose signature, accession to office, name, title or functions the court is asked to take judicial notice falls, in this category, it would be the duty of the Court to satisfy itself on the point by the best evidence available. But where as in the present case, no doubt has ever been raised as to the fact of Mr. Graham's appointment and its notification in the Fort Saint George Gazette, we do not think that the exhibition of a copy of the latter was a necessary legal preliminary to the Court taking judicial notice of the genuineness of his signature.

5. We may add that our attention has been drawn in court to a notification in the Fort Saint George Gazette of 25th April 1922 (nearly a month before the date of Ex. A) appointing Mr. Graham as Chief Secretary to Government and that if we had held that the exhibition of the Gazette containing this notification were necessary we should have admitted it under Section 428 Criminal Procedure Code to cure the defect. As authority for such a course we are content to rely on the observations of the learned Chief Justice in *Varadarajulu Naidu v. King Emperor* (1918) 36 M.L.J. 64: 42 Mad. 885. Passing to the merits of the case, the only question is whether we can rely on the evidence adduced to show that the appellants formed part of the band which fell upon and butchered these four servants of the Crown. We have the evidence of four eye-witnesses (prosecution

witnesses Nos 1, 2, 3 and 4) who all agree that the officers were murdered by a band of about 100 persons armed with knives, swords, and sticks, and that the appellants were among these 100 persons although they cannot speak to any individual action. Prosecution witnesses Nos. 1, 2 and 3 are constables forming part of the small force who saw what occurred from a distance of twenty or thirty yards. Prosecution witness 4 is an amshom peon who witnessed it from a verandah only three or four yards away. The occurrence was at mid-day and the appellants are persons well known to all these witnesses so that there is no reason why they should not have noticed and recognised them and been able to speak with certainty to their identity.

6. There is corroborative evidence of two other witnesses, prosecution witnesses Nos. 5 and 9 who did not witness the actual encounter but depose to the presence of the appellants in the mob which gathered at Kizhakepalli and was harangued by the notorious Mopah leader Ali Musaliar, before proceeding to Tirurangadi. A third witness, prosecution witness No. 6 who gives similar evidence has not been relied on by the Special Judge and although we should not ourselves reject his evidence as without value, it is inferior to that of the others, and we may leave it out of consideration.

7. If prosecution witnesses Nos. 5 and 9 are speaking the truth the direct evidence of prosecution witnesses Nos. 1 to 4 as to the participation of appellants in the crime is very powerfully corroborated-whether we look to the possibility of a mistake or deliberate false testimony on the part of the latter. For there can be no doubt that it was the same assemblage which Ali Musaliar harangued at Kizhakepalli which attacked the Police at Tirurangadi.

8. Endeavours have been made to discredit the testimony of both sets of witnesses on the score of private enmity as a motive for false testimony. The special Judge has carefully dealt with this in his judgment and has in our opinion come to a right conclusion. Such prior feeling as has been established in evidence is limited to prosecution witness No. 2 and P.W. 9 who may be in a position to influence prosecution witness No. 5. Prosecution Witnesses Nos. 1, 3 and 4 are unaffected by it. No cause of ill-feeling of a really serious nature is elicited in the

case of prosecution witness No. 9: and although the alleged enmity in the case of prosecution witness No. 2 has its origin in a murder case of 1917, in which the latter's father-in-law was one of the accused, we agree with the Judge in thinking that it is hardly a likely cause for the malicious implication of the accused in this case.

9. The suggestion that accused have been falsely implicated merely as being notorious rebels concerned in other incidents of the rebellion is too flimsy for serious consideration.

10. In our opinion the 'evidence of the above witnesses may be safely accepted.

11. We confirm the convictions and sentences and dismiss the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com