

In Re: Lakshmipathi Naick

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Court : Chennai

Decided On : Aug-02-1938

Reported in : AIR1939Mad168; (1938)1MLJ426

Appellant : In Re: Lakshmipathi Naick

Judgement :

Pandrang Row, J.

1. As many as ten persons were accused in the Court below and the charge in the case consisted of no less than seven counts. Only the appellant was convicted and that too under counts 2 and 3 alone and the remaining accused nine in number were acquitted and the other counts seven in number were found to be not established.

2. The conviction of the appellant is in respect of the alleged throwing of a bomb by him at the deceased Ayyappa Naicker at about 5 P.M. on the 22nd March, 1937, at Ettakkappatti. In respect of this act a charge of murder was framed against the appellant as well as a charge under Section 3 of the Explosive Substances Act and he was convicted under both the counts and given concurrent sentences of transportation for life under Section 302, Indian Penal Code, and Section 3 of the Explosive Substances Act. As regards the latter charge, that is, under Section 3 of the Explosive Substances Act, an objection was taken in the Court below and the same objection was repeated in appeal to the validity of the

consent given to the prosecution under Section 7 of the Explosive Substances Act (VI of 1908) by the Government in Ex. R, which is the Government order on the point. It is contended that this order being one which purports to be made by His Excellency the Governor cannot be deemed to be an order of the local government. The argument is that as the order purports to be made not only under Section 7 of the Explosive Substances Act but also under para. 8 of the India and Burma (Transitory Provisions) Order, 1937, and it must be held that the consent to the prosecution was given by His Excellency the Governor individually and not after consultation with the Ministers. There is really no point in this objection so far as he alleged absence of consultation with the Ministers is concerned. The Executive authority in the province is vested in the Governor, and the question whether he has consulted the Ministers or not in any particular matter is not a question that can be canvassed in Courts of law.

3. Another objection has been newly raised in the course of the argument in this appeal, namely, that under the Government of India (Adaptation of Indian Laws) 1937 the words, 'local Government' which are found in Section 7 of the Explosive Substances Act (VI of 1908) have been omitted so that the section ought to read as if the consent of the Central Government is required. It is here that Section 8 of the India and Burma (Transitory Provisions) Order, 1937, is relied upon for the purpose of showing that during the transitory period (during which the order in question was passed) the authority of the Central Government can be exercised by the Government. It is however not necessary to deal with this point finally because even if the point is sound and the prosecution and trial under Section 3 of the Explosive Substances Act are deemed to have been invalid for want of valid sanction or consent, the fact remains that the appellant has been convicted of an offence under Section 302, Indian Penal Code, against which this technical objection cannot be urged. I shall therefore proceed at once to consider the merits of the appeal, that is to say, whether as a matter of fact it has been proved that the appellant did throw the bomb in question and cause the death of Ayyappa Naicker on the 22nd March, 1937. The evidence for the prosecution is extremely interested, the material witnesses being enemies of the appellant.

4. [His Lordship discussed the evidence and concluded:]

5. On the whole, therefore, the evidence connecting the appellant with the throwing of the bomb is so tainted and unreliable that it is impossible to act upon it, or to support the conviction. The guilt of the appellant was left in such grave doubt by the unsatisfactory nature of the evidence against him that the proper course for the Court below ought to have been to have dealt with these charges against the appellant in the same way as it dealt with the other charges, namely, that they had not been satisfactorily established. The appeal is therefore allowed and the convictions and sentences are set aside and the appellant is acquitted. He should be released from jail unless he is liable to be detained for some other cause.

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