

In Re: K. Ramaraja Tevan and ors.

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Court : Chennai

Decided On : Feb-11-1930

Reported in : (1930)59MLJ945

Appellant : In Re: K. Ramaraja Tevan and ors.

Judgement :

1. The sixteen appellants do not dispute the Lower Court's findings of fact.
2. On 11th April, 1929, at Khansapuram, 20 to 30 persons came from the north armed with guns and sticks with the common object of shooting Sangiah Tevan and looting his house. When they were 50 yards off the house, one Sundara Tevan, P.W. 10, tried to dissuade them, and Krishna Tevan, P.W. 11, who belongs to Sangiah's faction, abused them. Krishna Tevan was hit on the head by accused 13, and then two more of the opposite faction, Alagu and Sangiah, ran up. The 1st appellant shot Alagu, and the third shot Sangiah. Then the fourth fired into seven persons who came to help them, after which there was a general stampede. Alagu was shot through his heart and died immediately. Sangiah had his leg broken and died of gangrene on the 14th.
3. The learned Judge has found that the shooting and the assault upon Krishnan were the sudden outbreaks of individual members of the assembly,, and therefore presumably were not in prosecution of its common object. Accordingly he has acquitted all the appellants of rioting. But he has found them all guilty of being members of an unlawful assembly under Section 143, Indian Penal Code, and

inasmuch as the men who fired (appellants 1, 3 and 4) undoubtedly had guns, he has found all guilty, either directly, or constructively by the provision of Section 149, of being armed with deadly weapons while being members of an unlawful assembly, the offence under Section 144, Indian Penal Code.

4. Accused 1 and 3 are found guilty of murder, Section 302, Indian Penal Code, and accused 4 guilty of attempted murder, Section 307, Indian Penal Code.

5. Accused 13 is found guilty under Section 323. It is argued by Mr. Nugent Grant that none of those convictions can stand because the two murders, the attempted murder and the hurt were several and independent transactions which had no real connexion with the unlawful assembly. For every distinct offence of which any person is accused there must be a separate charge (section 233), unless they are so connected together as to form the same transaction (section 235), and the misjoinder of charges in this case has in fact occasioned a failure of justice.

6. To this plea there would seem to be three sound answers. In the first place it cannot be said that there has been a failure of justice. Supposing that the murders and assaults were quite unconnected with the object of the unlawful assembly, a Court which had joined them all together in one trial might well have been led to attribute to the assembly force and violence of which it was entirely innocent, and so might have found it guilty of rioting; and had this one terminated in a conviction of rioting it would be impossible to say that the irrelevant consideration of the extraneous offences had not influenced the mind of the Court. But the charge of rioting was dismissed, and it must be said that the mind of the Court, though dangerously exposed to infection, proved absolutely immune.

7. No doubt ever since the pronouncement of the Judicial Committee in *N. A. Subramania Aiyar v. King-Emperor* it has been the general practice to assume that, if a mandatory provision of the Code has been infringed in framing the charge, the Court must of necessity be held to have failed in administering justice to the accused. Section 537 affords no real ground for any such assumption, and the Judicial Committee itself, when it had occasion to refer to *N. A. Subramania Aiyar v. King-Emperor* in *Abdul Rahman v. King-Emperor* (1926) L.R. 54 IndAp 96 : I.L.R. 5 Rule 53 : 52 M.L.J. 585 (P.C.) clearly indicated that the impugned

procedure must be one that is not only prohibited by the Code, but also works actual injustice to the accused. In the latter case the Code was clearly infringed, but the curative provision of Section 537 was considered a sufficient remedy.

8. In the second place, whatever conclusion was finally arrived at by the learned Judge, it is clear that before the evidence was heard it must have been a very open question whether the shooting was or was not in prosecution of the common object. It is a question of degree. If the men who protested had been ranged on the doorstep of Sangiah's house, it would be hard to say that shooting them was not in prosecution of the looting. What if they were five, ten, fifty yards away? It is a matter that could only be decided after a most careful consideration of the evidence as a whole; and it cannot be said that to have accused these persons of shooting in prosecution of the common object was in any way frivolous. If the charge could be postponed till after the conviction, a more perfect symmetry might be attained, but unfortunately that cannot be; and the charge of necessity must be founded upon the accusation (of. *Abdul Salim v. Emperor* I.L.R. (1921) C. 573). It cannot be said therefore that there has been any misjoinder in contravention of Section 233, Criminal Procedure Code.

9. In the third place, even supposing that the ultimate finding governs the charge, so that the Court was precluded from charging as though the shooting had been in prosecution of the common object, still it cannot be said that the whole affair was not in the course of the same transaction. The accused formed themselves into a body with the intention of looting and shooting Sangiah Tevan and frightening away any one who tried to prevent them; otherwise, there is no explanation for such a display of force. It has never been held that in a transaction all the persons engaged must have a common object. Taking the transaction to be the adventure of private war upon which the appellant's embarked on April 11th, a historian of that transaction would hardly omit all mention of the shooting as belonging to a totally different transaction. As Benson, J., observes in *Choragudi Venkatadri v. Emperor* I.L.R. (1910) M. 502 : 20 M.L.J. 220 'it is neither necessary nor advisable to attempt to define the expression 'the same transaction' which the Legislature has left undefined.' Each particular case must be tried by common sense and common knowledge of language, and if these tests be applied, the

whole affair from the formation to the disruption of this assembly seems obviously to be one transaction.

10. Therefore, the plea of misjoinder is not sustainable.

11. It is next argued that the appellants who are not found to have been armed cannot be constructively held guilty under Section 144 by the provision of Section 149. There can be no doubt that if a member of an unlawful assembly, liable under Section 143, Indian Penal Code, to six months' rigorous imprisonment, is armed with a deadly weapon, he is punishable with two years' rigorous imprisonment under Section 144. Therefore, being so armed is a thing made punishable by the Penal Code and, consequently, under Section 40, an offence.

12. Now, is the offence so committed by the member of the unlawful assembly in prosecution of the common object of that assembly? Prosecution, in plain English, is following up. They assembled and formed the common object of shooting a man. What did they do to follow it up? Some of them came to the assembly with guns, or stayed in the assembly with guns, and at any rate took care not to be parted from their guns. That seems to be clear following up. Mr. Grant would say that it was mere preparation, but after people have formed themselves into an unlawful assembly, and decided upon their common object, preparation towards that common object is prosecution or following up, and if the preparation happens to be an offence, then they are all equally liable. Suppose they burst in a door, that is not mere innocent preparation for the intended looting. It must be held therefore that this plea also fails.

13. There remain two pleas *ad misericordiam* on behalf of the murderers sentenced to death. It is clear from the medical evidence that accused 1 shot Alagu Tevan with various pellets through the heart and thigh. He may be taken to have aimed at his stomach and it cannot be said that he did not intend his death. Accused 3 shot Sangiah five inches below the knee and shattered the bones. He had said, 'why do you shoot him who was keeping quiet,' and for that innocent protest was shot. Mr. Nugent Grant says that the murderer only hoped to maim him, only hoped perhaps to cripple him for life. It was a murderous act without the smallest justification and it resulted in murder. We see no reason to interfere.

14. It cannot be said that any of the appellants has been treated with undue severity, and we dismiss their appeals.

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