

In Re: Arulanandu and ors.

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Court : Chennai

Decided On : Aug-23-1951

Reported in : AIR1952Mad267; (1951)2MLJ446

Judge : Panchapakesa Ayyar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342; [Indian Penal Code \(IPC\), 1860](#) - Sections 146 and 147; Evidence Act - Sections 106

Appeal No. : Criminal Appeal No. 660 of 1950

Appellant : In Re: Arulanandu and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : A. Ramachandran, Adv. for ;Row and Reddy

Judgement :

1. This is an appeal by 76 accused (alleged to be the residuum of 1,000 rioters) in S. C. Nos. 41 and 42 of 1950 on the file of the Court of Session, West Tanjore division. In these two cases, popularly known as the Nanalur Rioting Case, there were in all 122 accused before the Court of Sessions. The charges against them were as follows:

"1. That you, accused 1 to 122, on or about the 14th day of April, 1948, at 'Singamangalam and 'Vadakku Nanalur', were members of an unlawful assembly, and in prosecution of the common object of such assembly, viz., preventing the

arrest of persons and rescuing of arrested persons concerned in the rioting at 'Thuvarankollai Odai,' 'Singamangalam,' on 12th April 1948; and as-saulting and murdering the Police party stationed at 'Vaddakku Nanalur' and wresting by force the rifles of the Police, committed the offence of rioting, that you accused 44, 47 and 49 were armed with deadly weapons and thereby committed an offence punishable under Section 148 of the Indian Penal Code, and the rest of you under Section 147, I. P. C., and within my cognizance.

2. That you, accused 1 to 122, at or about the same time and place, and in the course of the same transaction, did an act, to wit, armed yourselves with sticks; 'aruvals' and other deadly weapons, and attacked the Police party with stones, causing injuries to the Policemen with such intention and under such circumstances that if by that act, you had caused the death of the Policemen you would have been guilty of murder, and thereby committed an offence punishable under Section 307 of the Indian Penal Code, and within my cognizance.

3. That you accused 1 to 122, at or about the same time and place, attempted to commit dacoity, an offence punishable under section 395 of the Indian Penal Code, and within my cognizance.

And I hereby direct you to be tried before me on the said charges. Dated, this the 31st Day of July, 1950.

(Sd) K. SRINIVASAN,

Sessions Judge."

The learned Sessions Judge convicted 73 of the appellants under Section 147, I.P.C., and 3 of the appellants, namely accused 44, 47 and 49, who had been armed with deadly weapons during the course of the riot, under Section 148, I.P.C., and acquitted the rest. In view of the fact that all these accused had been in remand for more than two years during the pendency of this long-drawn-out trial, he sentenced accused 44, 47 and 49 to undergo rigorous imprisonment for one year each and the other 73 accused to undergo rigorous imprisonment for 9 months each. He directed all the sentences to run along with any other sentences

which they might be undergoing.

2. I have perused the records and heard the learned counsel for the appellants, Mr. Rama-chandran, and the learned Public Prosecutor 'contra.' The facts were briefly these. In that locality there were three kinds of troubles and factions slowly growing, as is only natural in these post-war days of furious ferment.

3. One was between the 'landlords' or 'Mirasi-dars' (many of the P.W.s are Mirasidars') and landless labourers' to which class most of the accused belong. The second faction was between 'Congressmen' like P.Ws' 13, 29, etc., and 'Communists' to which class most of the accused are said to belong. Some of the accused, like Accused 37, were "rival congressmen" or "ex-Congressmen." The third faction was between 'cast Hindus' to which class many of the P.Ws belong, and 'Hari-jans and Pallas' to which class many of the accused belong. The three-fold faction came to a head in April, 1948. On 12-4-1948, some Congress leaders going round on their propaganda work were waylaid and attacked by a huge hostile mob near the outskirts of North Nanalur village. The car by which they were travelling was stopped and smashed and overturned, and it lay by the side of the road at a place call "Thuvarankoilai odai", a couple of furlongs to the north of the village. In connection with the investigation into this case of rioting, a police party proceeded to Nanalur. Two constables, P.Ws 1 and 2, had been stationed near the overturned car for the purpose of watching it. On the 14th of April the date of the present occurrence, the Deputy Superintendent of Police took a photographer, P.W. 21, and directed him to take photographs of the damaged car. Leaving P.W.s. 21, 26, 7 and 8 at the spot, the Deputy Superintendent proceeded to North Nanalur. From there he took a party of reserve police and went to 'Sendamaraikkan' in order to apprehend the persons who had taken part in the rioting on the 12th. At North Nanalur a small police force consisting of a Sub-Inspector, Ramiah Pillai, a Head Constable, P.W. 12, and four constables were left. The police arrested two persons, Kal-yanasundaram and Subramaniam, and kept them in their custody at North Nanalur. By about 5 P.M. on 14-4-1948, P.W. 21 finished taking his photographs of the wrecked Congress car. Then the damaged car was taken out of its rut and placed on its wheels in order to take it on to the road. A driver who had gone in another car to take the photographer there

was examining and setting right the mechanism of the wrecked congress car with a view to take that car to North Nanalur. By this time a hostile mob about 600 or 700 strong went there shouting slogans like, "Long live the Revolution" "Victory to the Red Flag" "Down with the Congress" "Cut the Policemen!" "Beat the policemen!" "Snatch their muskets" etc.", and pelting stones freely, and rather aimlessly, more with an intent to intimidate the police to release the arrested people, and not to arrest more people, than with a specific intent to hurt any specific police officer or Congressman or 'Mirasidar.' P.Ws 1 and 2 warned the crowd not to raise such slogans, and not to pelt stones. As the crowd did not stop shouting slogans or pelting stones, P.Ws 1 and 2 fired a round each. But this did not stop the crowd which kept rushing forward. So the two constables, P.Ws. 1 and 2, retreated backwards. The onrush-ing crowd caught hold of the two cars, the previously wrecked Congress car and the photographer's relief car, and damaged both of them, and then gave chase to P.Ws. 1 and 2. A portion of the mob tried to prevent P.Ws. 1 and 2 from reaching North Nanalur. P.Ws 1 and 2 fired some more shots, with a desire to create terror in their pursuers, and finally succeeded in fleeing to North Nanalur, the crowd chasing them close. At North Nanaiur, P.wS 1 and 2 told the police stationed there about the incidents. The police party then stationed itself underneath a stout tamarind tree. When the crowd rushed to that tree, the Sub-Inspector warned the crowd several times not to shout slogans or throw stones. Stones continued to be pelted by members of the crowd, but most of them fell harmlessly on the tamarind tree instead of on the police. The mob was by then one thousand strong; and some of the members were armed with sickles, axes and sticks. Some had also baskets filled with stones. One Natesan, who was armed with a sickle and a stick, was at the head of the mob, and he incited the members of the mob to attack the police and beat them soundly. The shouting of slogans went on; so too the pelting of stones. As the situation became dangerous, the police opened fire. Natesan had his head blown off by a rifle shot in that police firing. He died on the spot. Accused 58 and 59 also received serious rifle shot injuries. But they were removed by the other members of the mob and were arrested only later on when they presented themselves before P.W. 33, the doctor of the Thirutharaipundi hospital, for treatment. After the firing, the crowd retreated a little but later on reformed itself and surrounded the village, threatening to set fire

to the houses and destroy the police party. But some resourceful individual, not named, managed to go on a cycle to 'Sendamaraikkan.' He informed the reserve police there about this attack by the mob. Immediately, the Deputy Superintendent of Police, accompanied by the reserve force rushed to North Nanaiur. The mob was thus caught between the Police party at the tamarind tree and the reserve party under the Deputy Superintendent of Police. It began to disperse. The reserve police made a 'lathi' charge and arrested accused 32, 42 to 51, 118 and two others on the spot. Accused 44, 47 and 49, all of them Harijans,, were armed with sickles and axe when they were found among the rioters and arrested. Two constables received trifling injuries due to stone hits during this riot. In all, 274 persons were put up before the Special 1st Class Magistrate, Tiruchirapalli, in P.R.C. Nos. 2 and 4 of 1919 on his file. He committed only 122 out of them to Sessions.

4. The learned Sessions Judge acquitted all the 122 accused before him on the charge under Section 307. I.P.C., holding that there was absolutely no evidence to show that the rioters ever Intended to 'murder' any constables, or to attempt to murder any constables, and that the prosecution evidence had only proved that the common object of the unlawful assembly was only to assault and beat the police or to use such small force against them. The charge under Section 396 has been sprit up and laid aside for future action, if necessary, under Section 240 Criminal Procedure Code and Rule 156 of the Criminal Rules of Practice.

5. Mr. Ramachandran, for the appellants, contended that the learned Sessions Judge was wrong in convicting the appellants under Sections 147 and 148, I.P.C., without sufficient and individual proof against each of them that he had been a member of the unlawful assemojy with the common object of beating or causing nurt to the police when it committed this rioting. He urged, quite correctly, that there is no such thing like "constructive liability" for the offence of being a member of an unlawful assembly, or liability for conviction under Section 147 by being merely proved to have been found with known or proved rioters, and that the requirements of the law under Sections 141, 146 and 148, I.P.C., must be strictly proved before any of the appellants can be convicted for rioting or other offence covered by these sections. He also urged that the convictions of all the appellants were 'vitiated', as the learned Sessions Judge acted 'illegally' in not putting all

necessary questions under Section 342, Criminal Procedure Code, to each accused regarding the facts appearing against him in the evidence, in order to enable him to explain away those facts, as he was bound to do, and that the mere fact that there was a complete and full questioning in the committal Court would not cure the illegality. He relied on a recent ruling of Govinda Menon and Ramaswami, JJ., 'In re Solomon', C A No. 894 of 1950 (Mad) to the effect that the mere fact that the accused is asked by the Sessions Judge whether he wishes to say anything more in addition to what he has stated in the committing Court (even if there was a complete and full questioning in that Court) is 'not sufficient', and that it is obligatory upon the Sessions Judge (the 'Court' trying the case, to which the word 'shall' in Section 342 applies) to 'comply strictly' with the provisions of Section 312 of the Criminal Procedure Code and to put every piece of evidence relied upon by him against every one of the accused to that particular accused and get his explanation, if no care is to be offered at the peril of the conviction and sentence being set aside, as 'vitiated', and re-trial ordered. His contention was that the learned Sessions Judge did not comply with the provisions of Section 342 of the Criminal Procedure Code in this case and merely put a general question, after reading over the accused's statement before the committing magistrate and his admitting it to be correct, whether he wished to add anything to it, without putting to him all the evidence he relied on against him, like the persons identifying him among the rioters, the acts attributed to him etc., in order to enable him to explain away those pieces of evidence, if he liked. This contention is correct in law. The terrible number of the accused before the Sessions Judge was no excuse for him to depart from the provisions of Section 342 Criminal Procedure Code. But, happily, no re-trial was asked for finally in this elephantine case, for reasons stated later.

6. Before proceeding further, in general interests, and after hearing the learned counsel for the appellants and the learned Public Prosecutor, enunciate five fundamental principles which a Court will have to observe in such cases of mammoth rioting which are becoming more and more common in our own country nowadays. The first is that notwithstanding the large number of the rioters or of the persons put up in Court for rioting, and the consequent difficulty for the prosecution to name the specific acts attributed to each of the accused the Court

must see to it that all the ingredients required for unlawful assembly and rioting are strictly proved by the prosecution before convicting that particular accused. The fact that there were a thousand rioters, and 122 accused before the Sessions Judge, will not take away from the prosecution even an iota of the responsibility of proving them. It may be the misfortune of the prosecution. But the misfortune of the prosecution should never be allowed to become the misfortune of the accused. Just as the culprits in undetected crimes escape punishment, these unproved persons also must be unhesitatingly acquitted.

7. Secondly, spectators, wayfarers, etc., attracted to the scene of the rioting by curiosity, as generally happens in the country-side when a riot or affray is going on, should not be, by reason of their mere presence at the scene of rioting and with the rioters, held to be members of the unlawful assembly or rioters. But, of course, if they are proved to have marched with the rioters for a long distance, when the rioters were shouting tell-tale slogans and pelting stones, it will be for them to prove their innocence under Section 108 of the Indian Evidence Act.

8. The third is that it will be very unsafe, in the case of such large mobs of rioters to rely on the evidence of 'a single witness' speaking to the presence of an accused in that mob for convicting him, especially, when no overt act of violence, or shouting of slogans, or organising the mob, or giving orders to it, or marching in procession with it, or other similar thing is proved against him. In a big riot, like this, by hundreds of persons, it is very easy even to mistake one person for another, and implicate honestly really innocent persons, and even to mistake persons seen elsewhere as having been seen there. An ordinary rule of caution and prudence will require that an accused identified only by one witness, and not proved to have done any overt act, etc., as described above, should be acquitted, by giving him the benefit of the doubt.

9. The fourth principle to be observed In such cases is that where there are such acute factions, one based on agrarian disputes and troubles, another on political wrangling and rivalry, and a third on caste division, or the division of the haves and the have-nots, the greatest care must be exercised before believing the evidence of a particular witness belonging to one of these factions against an accused of the

opposite views. This principle becomes of special importance when there are no overt acts, etc., proved and when there are only one or two witnesses speaking to the presence of the accused among the rioters, and they belong to the classes or factions opposed to the accused.

10. The fifth principle to be observed is that mere 'followers' in rioting deserve a much more lenient sentence than leaders like Natesan, who mislead them into such violent acts, by emotional appeals, slogans and cries.

11. Now, I shall apply the above five principles to this case. Overt acts have been proved in an aggravated form only against three persons, namely, accused 44, 47 and 49, who were found marching in the riotous procession with sickles and axe, when the rioters were uttering the violent slogans against the Congress, Police, etc., I have absolutely no doubt that the convictions of accused 44, 47 and 49 under Section 148, I.P.C., were correct. There was abundant evidence on record to prove it. Though the learned Sessions Judge did not put the question regarding the sickles and axe to them, under Section 342 Criminal Procedure Code, as he should have, they themselves stated in their replies to his general question, that they did not have these sickles or axe with them and that they were not even present at the rioting. So the failure of the learned Sessions Judge to put the question pointedly to them did not result in any prejudice to them, and did not vitiate their convictions. But, their sentences deserve reduction, as they did not use the deadly weapons against any one, and as they have been in remand for more than two years during the trial. I reduce their sentences into rigorous imprisonment for six months each. These sentences will run along with any other sentences which they might be undergoing.

12. The learned Public Prosecutor admitted that only one witness each has spoken to the presence of 28 appellants namely accused 1, 5, 11, 13, 17, 21, 25, 28, 38, 64, 66, 70, 71, 73, 75, 77, 79, 96, 97, 98, 99, 101, 102, 120 and 122, at the scene of the rioting, and that none of those accused were also alleged, even by this single witness, to have done any violent act, or carried any weapon, or shouted any slogans, or organised the rioters, or marched in procession with the rioters for any distance when they were shouting their slogans or expressing their

common intention to beat the police or pelt-ing stones. So, applying one of the five principles I have laid down above, all these accused are given the benefit of the doubt and acquitted of the offence under Section 147, I.P.C., and their convictions and sentences are set aside, and their bail bonds cancelled.

13. I now come to the remaining 48 accused. There are two or more witnesses who have spoken to the presence of each of them among the rioters that day, and I have absolutely no doubt that they were among the rioters that day. No doubt they were not proved to have themselves done any overt act of violence or shouted any slogans etc., but they were proved to be marching with the rioters when they were snouting slogans and pelting stones, It was not the case of any of them that they had gone to the spot attracted by curiosity, like a school-master, or a doctor or a lawyer or a government servant or other citizen to see impelled only by curiosity what the matter was. It is obvious that the presence of such, innocent men at the spot, not being secret, would be spoken to by a number of persons who saw them there, though it would not prove any criminal intention shared in the common with the rioters. But, where a man's case is that he went to the scene of rioting and stood there out of curiosity alone, and not with any unlawful object, but he is proved to have marched with the rioters, it is for him to state and prove his innocence as it is a matter within his special knowledge under Section 106 of the Indian Evidence Act. In my opinion, it is his duty, once the prosecution has proved his marching along with the rioters, to show that though he was found marching with the rioters he was with that group not with any unlawful common object of committing rioting, but only out of curiosity. As none of these accused did so, I confirm their convictions under Section 147, I.P.C., as there is plenty of credible evidence to show that they marched in procession with the rioters when they were shouting slogans and pelting stones, and it was up to them to prove their innocence, the prosecution having 'prima facie' proved them to be guilty under Section 147, I.P.C., The failure of the learned Sessions Judge to question them in detail about the pieces of evidence against them was, no doubt, irregular. But it has not actually prejudiced them in any way in this case and the learned counsel does not want a re-trial as I am for reducing the sentences of these accused to the periods already undergone, considering the fact that they carried no weapons and committed no overt act of violence, and only marched in procession for some

distance with the other rioters, in these days of democratic activity and processions of all kinds, and were misled by Natesan and others. I consider that the periods of imprisonment already undergone by them would amply meet 'the end of justice', especially in view of their having been in remand during the trial for more than two years. So, I reduce their sentences to the periods of imprisonment already undergone. Happily, this decision has also prevented the ugly need for a re-trial of this mammoth case, as these accused do not want any retrial now.

14. The learned Public Prosecutor wanted to distinguish the case of accused 58 and 59, who received, severe gun shot wounds, and wanted them to be treated more severely, like accused 44, 47 and 49, and not like the other accused whose convictions I have confirmed. I cannot agree. Merely because they received gunshot wounds, they cannot be presumed to have been more aggressive than the other 43 appellant rioters of this group. It often happens, in police firing of this kind, that it is the less clever and the less prominent people who stand and shuffle about and receive the bullets, while the more clever and more forward people scamper away and escape the bullets. So, do not consider that accused 58 and 59 deserve any higher sentence than the 43 appellant rioters of their group.

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