

In Re: Loganath Aiyar and ors.

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Court : Chennai

Decided On : Apr-19-1909

Reported in : 4Ind.Cas.700

Judge : Ralph Benson, ;Sankaran Nair and ;Munro, JJ.

Appellant : In Re: Loganath Aiyar and ors.

Judgement :

Relph Benson, J.

1. The appellants are the persons who were convicted by the Sessions Judge in what are known as the Tinnevelly rioting cases. The general character of the riot is briefly stated by the Sessions Judge as follows: 'On March 13th, 1908, there occurred in Tinnevelly an outbreak remarkable on account of the wholesale and deliberate destruction of Government property by a mob of rioters and the spirit displayed by it of open defiance to constituted authority. Every public building in Tinnevelly Town, except the Sub-Registrar's Office, was attacked. The furniture and records of these public buildings, which are all within a radius of a furlong, were set on fire and in most cases the pandals and portions of the buildings themselves were burnt. The Municipal Office was gutted. No private building in Tinnevelly Town was attacked but shops were everywhere made to close. The Reserve Police had to be called out but the stone-throwing mob yelling 'Bande Mataram' would not disperse till it had been fired upon several times.' The events

which led up to the riot have been stated by the Sessions Judge and need not be repeated in detail. It is sufficient to say that the excited state of feeling which prepared the way for the riot was the result of seditious speeches made by Chidambara Pillai and Subramania Siva for which they were subsequently convicted and sentenced to imprisonment and of certain meetings held to celebrate the release from jail of the Bengali agitator, B.C. Pal. The immediate cause of the riot appears to have been the remand to jail of Chidambaram Pillai and Subramania Siva on the 12th March, pending the result of certain security proceedings taken against them in connection with their seditious proceedings.

2. The evidence for the prosecution shows that the riotous mob first formed at Viraraghavapuram, a suburb of Tinnevely lying around the Bridge Railway Station, where it caused some of the shops to be closed. It then proceeded to the Hindu College where it prevented the Principal from entering, threw stones into the compound and caused the College to be closed. It next proceeded to Messrs. Parry and Co's buildings, where their Agent (Mr. Cameron) and the Principal of the Hindu College (Mr. Champion) had taken refuge. It did some slight damage there and then passed on to the C.M.S. College where it raided the premises breaking doors and windows and benches, &c., and eventually caused the College to be closed. It then passed westward into the town through Swami Sannadhi Street and thence round the Nelliappa temple, proceeding first along the North Car Street, then along the West Car Street to the Hospital and Police Station in Cutcherry Road breaking all the Municipal lamps and closing shops as it went. At the Police Station there were three constables, whom the mob compelled to shout 'Bande Mataram' in token of their sympathy, and it then entered the Court of the Additional District Munsif which adjoins the Police Station and compelled the District Munsif to promise to close the Court. The riotors then proceeded by the East Car Street to the Municipal Office where they 'broke the lock on the gate at the entrance, entered, went upstairs, overturned desks, took out the records and brought chairs, benches and tables outside and set fire to them in several heaps. The clerks' turbans left behind were dipped in a tin of kerosine oil and set on fire and thrown on the heaps of furniture to raise a blaze. Finally, the whole building caught fire and was reduced to ruins as also the cattle shed in the rear of it.'

3. About the same time or a little later a portion of the mob attacked the Post Office and set fire to it. Meantime the Constables at the Police Station, seeing the smoke of the burning Municipal Office, rang the alarm bell, and the mob, angered at this act by men who had just professed their sympathy, returned to the Station and attacked it with stones. One Constable fired a few shots but the mob surged into the building and proceeded to wreck and burn it. 'They first broke King Edward VII's portrait and tables and chairs and made a bonfire in front of the Station and inside the hall. They broke the lock of the record room and brought out records lanterns, guns and revolvers deposited by private owners, police muskets and other articles and threw them on the fire. They also broke into the Inspector's room and set fire to the furniture and the records in fixed almyras. They threw burning records on the pandal at the back of the Station and in the latticed work of the arch. Some of the Constables were hurt by stones. At the same time or soon after, they went again to the Additional District Munsif's Court and set fire to the pandals in front and rear and took out furniture, a punkah, books, &c.;, and made a blaze of them.'

4. Meantime the District Magistrate who was at Viraraghavapuram was reinforced by a party of the Reserve Police from Palamcottah and marched into Tinnevely Town whence the smoke of the burning buildings was visible. In Swami Sannadhi Street they met a large body of the rioters, who refused to disperse until fired upon with ball cartridge and again at the Police Station they were surrounded on all sides by the mob and were again obliged to fire on them, after which the rioters dispersed.

5. The case for the prosecution is that each and all of the appellants took part at one or more places in the proceedings of this riotous mob whose common object was to Commit mischief by fire to the public buildings of the town and the records therein and which did commit those acts and that they are, therefore, guilty of offences punishable under Sections 147, 435 and 436 read with Sections 149 and 34, Indian Penal Code.

6. The appellants one and all pleaded alibi and alleged that the evidence adduced against them was the result either of deliberate concoction or of mistake as to their

identity on the part of the witnesses. It is necessary, therefore, to examine the evidence as it affects each of the appellants.

7. [After discussing the prosecution evidence at great length in Appeal No. 635 of 1908 of Loganatha Aiyar, 2nd accused: His Lordship proceeded to observe on the defence evidence].

8. Against the evidence of the witnesses who are above referred to as credible we have to consider the alibi set up by Loganatha Aiyar. He has called two neighbours (10th and 11th defence witnesses), a fuel merchant and a Chetty's accountant, who say that they saw him at his house about 12-30 P.M., and also played cards with him in his house on the day of the riot from about 1 to 2-30 p.m. They have nothing but their bare memories to fix the day and the time. They say that they did not know that the exact time was of any importance in the case. The 10th witness told the facts only to his wife and mother and the 11th witness told the facts to no one until they told the Vakil for the defence two or three days before they were examined in Court. This was some five months after the events. I am not disposed to accept this evidence in preference to that adduced by the prosecution. Loganatha Aiyar has adduced evidence of good character and the fact that he is an educated man of good family connection would render it prima facie unlikely that he would be guilty of crimes of violence, but this presumption cannot be pressed too far in the case of offences originating in extreme political feeling.

9. [His Lordship proceeded next to discuss prosecution evidence against the other accused and observed as regards the 16th accused]. The Vakil for this accused has made an elaborate comparison of the statements made by the several prosecution witnesses when examined at various times in regard to this matter, with a view to show that there are discrepancies or contradictions which render the evidence untrustworthy and indicate concoction. I do not, however, think, that such discrepancies as have been pointed out indicate concoction, or are more than might be expected of honest witnesses describing a confused event like a riot in which many persons were concerned and in which many separate acts were done by each rioter, some of which might be observed by one witness and some by

another, and observed from different points of view and with varying degrees of accuracy. The main facts are proved beyond doubt and the negative evidence of the witnesses, who say that they did not see the accused doing anything, cannot outweigh the positive evidence of those who prove the acts done by him.

10. The Vakil for this accused has strongly pressed on us a legal argument to the effect that as this accused was not a member of the unlawful assembly at the beginning, and even resisted it when it first came to the District Munsif's Court, he could not legally be charged and tried with the other accused, for the acts done by the mob at the Municipal Office and Kerosine Oil Depot before he joined it, and also that he could not have had the same common object, since part of the mob's common object was to destroy the Municipal Office and Depot, an object which was carried out before he joined them. It was also suggested that the common object of the mob was originally only to close the schools, shops and offices and make a demonstration, without intending to cause destruction of public buildings, that the project of destroying the public buildings developed later and that, therefore, the common object of the mob changed and that from that time their acts could not be regarded as forming part of the same transaction with their previous acts, so as to justify the trial of the 16th accused along with the other rioters, that his trial with them was illegal and that he should, therefore, be acquitted or a retrial ordered. I am unable to accept these contentions. In the absence of evidence or reasons to the contrary it is permissible to presume that the common object of a riotous mob is that indicated by their conduct, and that they entertained from the beginning the common object indicated by their conduct throughout their proceedings. The evidence of the 5th prosecution witness shows that the 1st accused, Gurunatha Iyer, and some ten others conspired together on the morning of the 13th to cause a riot, closing bazaars and destroying Municipal lamps, and to finally break into the Collector's Office and burn the records in the case against Chidambaram Pillai. It is argued that in this there was no reference to an intention to burn any of the public buildings and that the fact that the mob did not on the first occasion set fire to either the Police Station or the District Munsif's Court shows that their intention up to that time was only to close the public offices, not to destroy them. I do not think that this at all follows. The Station was protected by three armed constables and the mob may well have hesitated to proceed to

extremities against them; especially when the constables showed sympathy with them by joining in the shouts of 'Bande Mataram'. The mob may even have hoped that the constables would join them, for the evidence shows that shortly afterwards the mob called to the Reserve Police to join them and shoot down the white men. In the same way the District Munsif's Court was protected by peons and Amins and by its proximity to the Police Station. The District Munsif submitted to the mob, and the mob may thus have been temporarily diverted from its intention to attack these buildings. It swept on to the Municipal Office and set it and then the Kerosine Oil Depot on fire. This, no doubt, added to the excitement and recklessness of the mob and it then returned to the offices in the catchery lane. Had, the programme of the mob been no more than that indicated by what was heard of the conspiracy that morning, the mob would have gone on to the Collector's office in Veeraragavapuram which was to the east of the Municipal Office. Instead of doing that it evidently repented of having spared the Police Station and District Munsif's Court and being now bolder and more excited, it returned towards the west to the District Munsif's Court and the Police Station and attacked and set fire not only to them but also to the Hospital. The 16th accused incited them to attack only the Police Station, so the attacks on the Munsif's Court and the Hospital were not due to his incitement but must have been in pursuance of the original common object of the mob. In my opinion the proceedings of the mob from first to last showed such continuity of purpose and of action and were united by such proximity in time as to form one transaction within the meaning of Sections 235 and 239, Criminal Procedure Code, so as to render all the rioters liable to be tried at the same trial for the acts done by each of them.

11. In connection with the separate charge against the 2nd accused alone under Section 147, I.P.C., for his acts at the C.M.S. College, it is suggested that what occurred at that school is one transaction, and that what occurred at the Police Station is another transaction and that the charge does not allege that both formed part of the one major transaction, and that, therefore, the trial of the 16th accused for his acts at the Police Station along with the 2nd accused for his acts at the C.M.S. College is illegal. I do not think this contention is valid. As I have already stated, I think the riotous proceedings of the mob throughout that day formed one transaction within the meaning of Section 239, Criminal Procedure Code, though,

of course, that transaction consisted (as all long transactions must) of a number of minor transactions, but it is just to provide for such cases that Section 239, Criminal Procedure Code, was enacted. I am of opinion that there is nothing illegal in the trial of all the accused at one trial. The 16th accused could not, of course, be held responsible for acts done by the mob before he joined it, such as the attack on the Municipal Office or the acts at the C.M.S. College. But it was after he joined it that it attacked and fired the Police Station. He took an active part in that attack and that is sufficient to justify his conviction.

Sankaran Nair, J.

12. [After describing the main features of the whole case His Lordship proceeded to observe.]

13. There can be no doubt that the mob, all through, formed an unlawful assembly. But till they arrived at the Police Station, there is no evidence to show that their common object was to set fire to public buildings. Their object as disclosed by their conduct and the earliest Police information who was then the Post Master was to close all offices and other places of business, and to injure Municipal property. The facts that they left alone the Taluk Kutcherry and the Viraragavapuram Police Station show that. It is also significant that no personal harm was attempted to the native officials, like the Tashildar at the H.S., the Sheristadar at the Municipal Office and the Sub-Magistrates, nor to the European Principals of the Colleges nor to Mr. Cameron after the office was closed I have already referred to the conduct of the mob at the Police Station and the Munsif's Court. The pandals caught fire as the burning records were thrown on it. Destroying the Municipal property at the office and the Kerosine Oil Depot is consistent with their previous conduct and in pursuance of the intention already disclosed by the demolition of the Municipal lamps. We have not been referred to any evidence that the Municipal office building was actually set fire to, by the mob. The evidence is, that it caught fire, when the furniture was burning. The evidence as to the Kerosine Oil Depot is to the same effect. On this part of the case, therefore, my opinion is that the common object of the crowd till they destroyed the depot was to make a demonstration by closing all, places of business and by injuring Municipal

property. I can find no evidence that the mob had any intention of committing any mischief by interfering with any property other than Municipal property. The presence of the jutka drivers in the crowd, explains possibly the feeling towards the Municipality. Nor do I find any evidence of any intention to set fire to any public building because in the Municipal Office, the Kerosine Oil Depot, and the Police Station the building or any portion thereof caught fire in the course of burning of the furniture. I have not been able to find any evidence that any one in the crowd, much less any prominent man amongst them whose conduct may be taken to indicate the common object set fire to any building itself for the purpose of destroying it or otherwise injuring it. The Post Office alone was set fire to, but that was due to the refusal of the Post Master to open the door. Nor was the raid on the Police Station within the scope of their original intention. I have already discussed the evidence bearing on that point and arrived at the conclusion that according to the prosecution, it was due to the instigation of the 16th accused. The Public Prosecutor argues that if the attack on the Police Station was not within the scope of their original intention the fact that the mob turned westwards after quitting the Police Station requires explanation. The Kerosine Oil Depot lies to the west. Many among the crowd must have belonged to the West car Street. Further it is impossible to say and it is not in evidence that the entire crowd turned westwards. The Judge's opinion that a detachment turned north is probable.

14. From this time forward, therefore, the common object of the unlawful assembly was to attack the Police Station. We will now consider the case against Kanagasabai the 16th accused.

15. The prosecution evidence also shows that Kanagasabapathy Pillai was not one of the mob till immediately before they entered the Police Station. For the prosecution witnesses are agreed that when the mob went to the Munsif's Court he was there in Court and told them to go away and leave the Civil Department alone. There is, therefore, no evidence to connect him in any way with the mob till then. Nor is it alleged by the prosecution that he took any part in the attack on the Municipal Office or Municipal Kerosine Oil Depot. In fact according to the prosecution he joined the mob only in the attack on the Police Station.

16. In the first and second charges against all the accused the common object of the assembly is to commit mischief by fire to public buildings and the accused are charged with having committed such mischief by setting fire to the buildings therein named: In the other charge against Loganathaiyer only the common object is stated to be to close by force if necessary the C.M.S. College which is not a public building nor is it a building mentioned in the first and 2nd charges. Kanagasabai was admittedly not a member of this assembly. The essence of the offence defined by Section 141 is the common unlawful purpose and an accused person cannot be convicted if the common object proved is different from the common object in the charge or for which he has been tried. The unlawful assembly referred to in the first two charges accordingly is very different from the unlawful assembly referred to in the other charge. The connection between the two charges appears nowhere. They ought not to have been tried together. Under Section 233, Sabapathy Pillai is entitled to be tried separately for the offence of mischief by fire to the Police Station which alone according to the prosecution he has committed. Sections 234, 235, 236 obviously do not apply. Nor am I able to regard as the same transaction the closing of the College and committing mischief by fire by two unlawful assemblies with different common objects, the appellant admittedly being a member of only one of them. The conviction must, therefore, be quashed. On the facts, it must also be held that Kanakasabapathi Pillai was not the member of an unlawful assembly whose common object was to set fire to the buildings or the furniture mentioned in the charge as he joined them only after the crowd set fire to the buildings except the Police Station. I have also found on the evidence that the alleged common object has not been proved. Nor can it be said on the facts set out above that he was aware within the meaning of Section 142, I.P.C., of any facts which would show that such was their common object and if the decisions in *Emperor v. Jethalal Hurlochand* 7 Bom. L.R. 527 *Hira Lal Thakur v. Emperor* 8 C.W.N. 715 are right that persons to be tried jointly must have been associated from the first in the series of acts which form the same transaction then the trial even on the 1st charge alone would be against law. I do not think it would be proper, therefore, to direct a retrial on this charge. It will be, of course, open to the prosecution to try him for the offence which the evidence, if believed shows he has committed, for rioting and mischief at the Police Station for which the other

batch of prisoners have been tried.

17. [Then His Lordship dealt with evidence in the appeals of Loganathier and other appellants and concluded.]

18. I have dealt with the appeals which have been argued before us. We have gone through the evidence against the other accused persons who have appealed with the assistance of Mr. Richmond and I see no reason to differ from the conclusions of the Judge who has carefully analysed the evidence.

19. In the result I would allow Loganathier's Appeal No. 635; Appeal No. 707 by Saminathai Pillai 29th accused, No. 753 by Sankaranaryana Pillai, No. 755 by Ramalinga Pillai, No. 759 by Kanagasabapathi Pillai, reverse the convictions, and acquit them and confirm the convictions in the other appeals and dismiss them.

Relph Benson, J.

20. The result, then, is that the 29th accused Sawaminatha Pillai, appellant in Criminal Appeal No. 707 of 1908 is acquitted. My learned brother disagrees with me as regards the 2nd, 3rd, 5th and 16th accused (Appellants in Criminal Appeals Nos. 635, 753, 755 and 759 of 1908). Their appeals must, therefore, be laid before another Judge for decision. The appeals of the other appellants (Criminal Appeals Nos. 752, 754, 693, 756, 694, 757, 758, 695, 696, 697, 698, 760, 699, 700, 701, 702, 703, 704, 705, 706, 761, 762 and 708 of 1908) are dismissed.

Munro, J.

21. These appeals have been referred to me under Section 429, Criminal Procedure Code. They are by persons who were convicted by the Sessions Judge of Tinnevelly for participation in the riot which took place at Tinnevelly on the 13th March 1908. The general features of that riot have been sufficiently set out in the judgment of the learned Judges who first heard the appeals. I shall, therefore, at once proceed to deal with the case against each of the appellants.

22. [After discussing the facts of each case His Lordship proceeded to observe].

23. It is, however, strongly contended that the joint trial of the appellant along with the other accused was illegal, and it is on this ground that one of the learned Judges would set aside his conviction. There are three charges against the appellant. In the first two charges the case set out is that the appellant and the other accused were members of an unlawful assembly, whose common object was to commit mischief by fire to public buildings and to the furniture and records therein, and that they or some other members of the said unlawful assembly did commit mischief by fire to a number of public buildings including the Police Station, and also to the furniture and records in the said buildings. The third charge is that the appellant and others being members of an unlawful assembly with the above-mentioned common object, used force or violence in pursuance of the common object. There was also a separate charge against Loganatha Iyer in connection with the attack on the C.M.S. College, and this charge was tried along with the other charges. The common object stated in this separate charge was to compel by force or show of criminal force the C.M.S. College to be closed. It is first contended that Section 239, Criminal Procedure Code, does not apply to the case and that the joint trial of the appellant and Loganatha Iyer is, therefore, bad. Section 239 lays down that when more persons than one are accused of the same offence or of different offences committed in the same transaction, they may be charged and tried together. I agree with Benson, J., that the riotous proceedings of the mob throughout the day, including the attack on C.M.S. College, formed one transaction in the meaning of Section 239. The mob appears to me, on the evidence, to have been essentially the same throughout, though doubtless it received accessories during its progress, and possibly, towards the end, split up in order the more quickly to achieve its object. This mob which had the common object to burn public buildings, &c., as in the absence of good evidence, to the contrary, we are entitled to presume from its conduct as pointed out by Benson, J. had also the common object to shut the C.M.S. College. I see no objection, therefore, to the joint trial of the appellant and Loganatha Iyer. It is also contended that the appellant was not a member of an unlawful assembly whose common object was to set fire to public buildings, &c., as he joined the mob only after it had set fire to the buildings other than the Police Station. Under Section 142, Indian Penal Code, whoever being aware of facts which render any assembly, an

unlawful assembly intentionally, joins that assembly or continues in it, is said to be a member of an unlawful assembly, and under Section 143, Indian Penal Code, he is liable to be punished for merely being a member of an unlawful assembly, though, as Section 149, Indian Penal Code, shows, he is not liable to be punished in respect of any specific offence committed by a member of the assembly before he joined it. Now, I think the evidence in this case fully justifies the finding that the appellant when he joined the Mob, knew that its common object was to destroy public buildings and their contents by fire. It is impossible to believe that he was unaware that the mob he joined had already set fire to the Municipal Office and the Kerosine Oil Depot. The former is only about 220 yards in a direct line from the Additional District Munsif's Court where the appellant was, while the latter is only a few yards away. The language used by the appellant to the mob shows he knew what had been done. Seeing that he had this knowledge, we are, in the absence of evidence to the contrary, fully justified in attributing to the appellant knowledge of the common object of the assembly which he joined. After he joined it the mob set fire to the Police Station and its contents. It has been contended that the attack on the Police Station was not part of the common object of the mob, but that, on the prosecution evidence, that attack was entirely due to incitement by the appellant. The prosecution evidence does not necessarily show this. It is quite possible that the mob would have attacked the Police Station without any incitement by the appellant; for, the action of the constables in giving the alarm when the Municipal Office and the Kerosine Oil Depot were set on fire, although at first they had pretended to sympathise with the mob and so saved their station, was quite sufficient to induce an attack. I find that the appellant Kanagasabhapathi Pillai has been rightly convicted, and dismiss his appeal.