

In Re: Ramakudumban and ors.

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Court : Chennai

Decided On : Nov-16-1949

Reported in : AIR1950Mad408

Judge : Pachapakesa Ayyar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 159

Appeal No. : Criminal Revn. Case No. 106 and Criminal Revn. Petn. No. 103 of 1949

Appellant : In Re: Ramakudumban and ors.

Advocate for Pet/Ap. : J.S. Vedamanickam, Adv.;Public Prosecutor

Disposition : Petition dismissed

Judgement :

ORDER

Pachapakesa Ayyar, J.

1. The three petitioners have been convicted under Section 160, Penal Code, of affray, and sentenced by the First Class Bench, Tenkasi, to pay fines of RS 5/- each, or, in default, to undergo simple imprisonment for three days each. The facts are simple. At 1.30 P.M. on 15th July 1948 the petitioners beat in a public place one Masilamani, a washerman, who tamely submitted to the beating without the

least retaliation, and simply howled in pain. Mr. Vedamanickam for the petitioners, relies on the wording of Section 160, Penal Code and on the ruling of Pandrang Row J. in Rami Reddi v. Narasa Reddi, A. I. R. 1938 Mad. 924 : (1938) Cri. L. J. 86 and urges that the petitioners ought not to have been convicted under Section 160, Penal Code as there was no fight, so essential to an affray, which is only a 'little war', whatever the case might have been if the petitioners had been charged under Section. 352 or 323, Penal Code. I agree. A war and an affray both require two sides fighting. Passive submission to beating by the other side will not do. Nor will mere howling in pain do. An answering challenge or war cry or even an active non-violent resistance might have done. He never resisted back violently or non-violently. This washerman was incapable of that. I, therefore, set aside the convictions and sentences of the petitioners, acquit them, and direct the fines to be refunded to them. I consider a retrial of the petitioners for an offence under Section 352 or Section 323, Penal Code in this petty case unnecessary.

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