

In Re: P. Kottoora thevan and ors.

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SooperKanoon Citation : sooperkanoon.com/794362

Court : Chennai

Decided On : Nov-20-1923

Reported in : AIR1924Mad584; (1924)46MLJ311

Appellant : In Re: P. Kottoora thevan and ors.

Judgement :

ORDER

1. Petitioners in this case were convicted before the Assistant Sessions Judge of Tinnevely by a jury of the offence of dacoity, and by the Assistant Sessions Judge himself of the offences of rioting, and by force of Section 149, Indian Penal Code, causing various kinds of hurt. On appeal, the Sessions Judge reversed the convictions under Sections 324 and 325, Indian Penal Code by force of Section 149 and sustained the convictions under Sections 395, 147 and 323, Indian Penal Code. Petitioners contend that there was no legal material on which a conviction under S. '395, Indian Penal Code, can be sustained.

2. The facts, which before us as a Court of revision may not be traversed, are that an unlawful assembly of which petitioners are said to have been members, attacked the Adi-Dravida village of Ilavankulam with the common object of committing mischief to the properties of the residents and hurt to then persons, that mischief and hurt were so caused and that in the course of this outrage, various articles of property belonging to various inhabitants were carried off by persons in the mob.

3. Now there is no evidence that any such article was carried off by 5 or more persons, or that 5 or more persons invaded any house, caused hurt to the inmates for the purpose of committing theft there, and carried off articles therefrom. The only evidence that we can find of theft of articles from a house or person, accompanied by the use of hurt or violence to the inhabitants of the house or to that person is as follows: Prosecution 7th witness says that accused 5, 6 and 10 beat him with sticks, and then entered his house and looted it, and prosecution 10th witness says that 9th accused beat him with a stick and then stole vessels from his house. In neither case is there any evidence that 5 or more persons joined in these robberies.

4. Prima facie then there is no evidence that any dacoity was committed. The only legal justification for a conviction for dacoity must rest on an application of Section 34 or Section 149, I. P. Code. For either section to apply, it was necessary to charge and prove that the unlawful assembly as a whole had the common intention of committing dacoity or that each accused knew that dacoity was likely to be committed in prosecution of the common object of the unlawful assembly. No charge in such tenour was framed against accused, nor were they called upon to defend themselves on such a count. In the charge framed they were no doubt called upon to defend themselves, inter alia, against the charge of being members of an unlawful assembly, whose common object was to commit mischief and cause hurt. But there was no count in the charge that the common object of the unlawful assembly was to commit dacoity, or to cause hurt for the purpose of committing theft, without which no conviction for dacoity by force of Section 34 or Section 149, I. P. Code, can be sustained. Again, no doubt, all the accused were charged substantively with the offence of ' dacoity by robbing Sankarapandyan and others, ' but, as we have pointed out, there is no evidence that any or all the accused directly committed dacoity.

5. The conviction for dacoity, based either on a finding of a common object not charged, or on evidence which does not prove the essential ingredients of the offence, cannot be sustained. The learned Assistant Sessions Judge therefore misdirected the jury and should have directed them that a conviction for dacoity could not be sustained on the charge and the evidence. We must, therefore, as

this is a case of an illegal conviction, interfere in revision and set aside the conviction of the petitioners for dacoity.

6. There is evidence, however, that accused 1, 2, 3 and 9 committed theft (Prosecution 5th witness), that accused 5, 6 and 10 committed robbery (Prosecution 7th witness) and that 9th accused committed robbery (Prosecution 10th witness). As they have been charged with dacoity, they may be convicted of these lesser offences of the same kind. We therefore convict accused 5, 6, 9 and 10 of the offence of robbery under Section 392, I. P. Code and accused 1, 2 and 3 of the offence of theft under Section 379, I. P. Code.

7. As to the sentences, the method of the Assistant Sessions judge of passing one consolidated sentence for all offences is not a happy one, and leads to complications, as we now find. We do not know what sentence he intended to inflict for the offence of dacoity, considering that dacoity was one of the offences which he found proved, the sentences were extremely lenient. Though we hold that no dacoity was proved to have been committed, we agree with the lower Courts that a very serious and concerted attack was made on these unfortunate villagers. We do not find ourselves inclined to reduce the sentences by much. In the case of accused 4, 7 and 8 now acquitted of dacoity and kindred offences, we reduce the sentences by six months. In the case of accused 1, 2, 3, 5, 6, 9 and 10, now acquitted of dacoity but convicted of robbery or theft, as above, we reduce the sentence by 3 months. The lower appellate Court's order under Section 106, Cr. P. Code will stand.