

**In Re: Pullannavara Hanumantha**

**In Re: Pullannavara Hanumantha**

**SooperKanoon Citation :** [sooperkanoon.com/797221](http://sooperkanoon.com/797221)

**Court :** Chennai

**Decided On :** Sep-15-1919

**Reported in :** 53Ind.Cas.620

**Judge :** Moore, J.

**Appellant :** In Re: Pullannavara Hanumantha

**Judgement :**

**Moore, J.**

1. The petitioner and five other persons were convicted of the offence of rioting armed with deadly weapons (sections 148, Indian Penal Code). On appeal the Sessions Judge of Bellary altered the finding in the case of the petitioner (accused No. 1) to one under Sections 323, 511, Indian Penal Code, and maintained the sentence but reversed the convictions of the other accused. The facts, as found by the lower Courts, are shortly these. There had been ill feeling between accused No. 6 and prosecution witness No. 4, the Sub-Inspector of Polios of Kowtalam, and there was a charge against 6th accused of having wrongfully confined P. W. No. 4 and P. W. No. 8. The Sub-Inspector of Adoni, who had been deputed to investigate the case, learning that 6th accused had sent for some bad characters from Halvy to commit offences against the Police, deputed a party of Head Constables and Constables with instructions to watch the path from Halvy, and to catch any Halvy people or strangers who might pass that way.

2. Soon after midnight on 7th May 1918 the Police, who were lying in ambush, saw ten or fifteen persons approaching armed with weapons and surrounded them. In the melee the petitioner aimed a blow with a battle axe at one of the Constables (P. W. No. 2). The latter warded off the blow with his lathi which was cut, but no hurt was actually caused to P. W. No. 2. Five persons including the petitioner were illegally arrested by the Police.

3. The Sub-Divisional Magistrate framing a charge under Section 148, Indian Penal Code, against accused Nos. 1 to 5 improperly omitted to state in the charge what the common object of the unlawful assembly was. The charge as framed was in these terms 'that you at Halvy armed with deadly weapons, i.e., battle axes, axes and sticks, committed rioting and attempted to strike P. Ws. Nos. 1, 2, 3 and 5 and that 1st accused aimed a blow with his battle axe at P. W. No. 2.' The Sessions Judge came to the conclusion that it was not proved that the accused were members of an unlawful assembly, that the conduct of the accused showed that it was not their intention to attack the Police, that the Police had no right to arrest the accused merely because they saw them coming along the road and that no offence had been committed by accused Nos. 2 to 6. The Sessions Judge was, however, of opinion that a clear case under sections 226, 511, Indian Penal Code, had been made out against the petitioner and that the petitioner was not justified in using violence and aiming a blow with an axe before any arrest had been effected by the Police.

4. Dr. Swaminathan for the petitioner contended that the Sessions Judge acted illegally in altering the conviction under Section 148, Indian Penal Code, into one of more serious offences under Sections 326, 511, Indian Penal Code that such an alteration of finding is not warranted by the provisions of Section 423, Criminal Procedure Code, and that the facts 'found would not justify a conviction under Section 326, Indian Penal Code, read with Section 511, Indian Penal Code. Under Section 423 (1) (b) of the Code of Criminal Procedure an Appellate Court has the power to alter the finding of the lower Court maintaining the sentence. It is urged that in cases not falling under sections 237 and 238, Criminal Procedure Code, the Appellate Court cannot convict a person of an offence with which he was not charged in the first Court, and reliance is placed on the decisions in Padmanabha

Payi Panniah v. Emperor (1), Criminal Revision Case No. 83 of 1919, Mongalu Aorodhone Hathi, In re (2) and Golla Hanumappa v. Emperor (3). In Manglu Aorodhone Hathi v. Emperor (2) it was held by a Bench of this Court, following Dasarath Mandal v. Emperor (4), that when persons were convicted of rioting and acquitted on appeal but were convicted by the Appellate Court of house trespass and hurt (Sections 448, 323, Indian Penal Code), the convictions were illegal on the ground that the accused could not be convicted of offences with which they were never charged, It is no doubt true that although hurt is generally caused in rioting, it does not necessarily follow that hurt is so caused. In this case, however, the charge, although it was carelessly drawn up, distinctly sets out that 1st accused aimed a blow with his axe at P. W. No. 2. The true principle appears to be that laid down in Yakub Ali v. Lethu Thakur 30 C. 288. namely, that if the accused have been prejudiced by the omission to prove the altered charge and if the defence might have been of a different character had the altered charge been framed in the first Court, the Appellate Court should not use the power vested in it by Section 423, Criminal Procedure Code, to give such an altered finding. This was the view taken by Sadasiva Aiyar, J., in Mannar Krishnan Chetty, In re 35 Ind. Cas. 816; (1916) 2 M. W. N 267: 4 L. W. 873; 17 Cri. L. J. 384. and I respectfully adopt it, It is suggested that the petitioner was prejudiced in his defence, as he had no opportunity of pleading that he was justified in resisting the illegal arrest and that in attempting to cause hurt he acted in the exercise of the right of private defence. It was open, however, to the petitioner to put forward this plea in the lower Court. He denied having used violence and in fact the defence was that accused Nos. 1 to 5 were arrested not on the Halvy path but while they were passing the Police station at Kowtalam. The lower Court found that the petitioner commenced the assault and aimed a blow at P. W. No. 2, which struck the lathi he was carrying.

5. The conviction of the petitioner under Sections 326, 511, Indian Penal Code, is not, I think, bad in law, but the sentence, one year's rigorous imprisonment, is, in my opinion, much too severe. The Police appear to have acted in a high-handed and illegal manner. I confirm the conviction but reduce the sentence to one of three months' rigorous imprisonment. The petitioner must surrender to his bail and serve the unexpired portion of the sentence. I see no reason to interfere with the

order directing the petitioner to give security under Section 106, Criminal Procedure Code.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**