

In Re: Dhanaraju

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Court : Chennai

Decided On : Sep-17-1948

Reported in : 1949CriLJ768; (1948)2MLJ557

Appellant : In Re: Dhanaraju

Judgement :

ORDER

Horwill, J.

1. The only evidence against the accused is that when the servants of P.W. 1 went towards the oven where they heard a noise as of wood being chopped, they saw about ten men near the oven. All of them with the exception of the accused ran away; and lying on the ground there was wood belonging to P.W.1's well.

2. On this evidence the accused was convicted and the papers sent to the Sub-Divisional Magistrate for action under Section 562, Criminal Procedure Code, who thought the evidence not sufficient to warrant the conviction of the accused, and so sent the papers to the District Magistrate, asking him to refer the matter to the High Court to have the conviction set aside. The District Magistrate did this, and the Government supports the reference.

3. With great respect, I agree with Lakshmana Rao, J. in Maila Gowda v. Emperor : AIR1939 Mad513 that references of this kind are not desirable, merely because the Sub-Divisional Magistrate disagrees with the Trial Magistrate, especially as the

accused has a right of appeal if he feels that he has been wrongly convicted. In the present case, however, there certainly was insufficient evidence to prove that the accused took the wood or even that he was in exclusive possession of wood or, in fact, in possession of the wood at all. His statement that he was attracted to the place by the light of the oven and that he had nothing to do with the cutting of wood or the illicit distillation that was going on, received some measure of support from the circumstance that he did not run away.

4. The reference is accepted, and the conviction set aside. The bail bonds of the accused are cancelled.

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