

C. Kunhammad and ors. Vs. Emperor

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Court : Chennai

Decided On : Aug-07-1923

Reported in : 81Ind.Cas.60

Judge : Krishnan and ;Wallace, JJ.

Appellant : C. Kunhammad and ors.

Respondent : Emperor

Judgement :

1. The appellants before us were convicted by the Special Magistrate of Tirur, under Section 143, Indian Penal Code, and Section 126 of the Railways Act and sentenced to five years' rigorous imprisonment each. The first contention of the learned Vakil for the appellants is that we must set aside the conviction under Section 126 of the Railways Act, because there is no proof as against each one of the accused that he did anything amounting to an offence under that section. He relies on *Aydroos v. Emperor* 72 Ind. Cas. 360 : 17 L.W. 21; (1922) M.W.N. 800; A.I.R.(1923) (M) 187 : 21 Cr. L.J. 360, in support of his contention. In the first place, there is the evidence of P.W. No. 1 in this case, that specific acts had been done by each of the accused. That evidence is in general corroborated by the evidence of P.W. Nos. 2 and 3. We see no reason to discredit the evidence in this case, which has been accepted by the Trial Judge.

2. As regards the authority quoted, that case is very different from the case before us. There the charge was under Section 126 of the Railways Act, read with Section 149, Indian Penal Code and it was held that Section 149 was not properly applicable to cases under the Railways Act. We need not express any opinion about that case. Here we have, specific evidence, as already stated, of what each accused did. Even if we do not accept in detail the acts attributed to each of the accused, there can be no doubt whatever that all these five accused joined together and acted together in removing the rails from the Railway line, in Tirur Railway Station. If two or more persons join in the commission of an act, which amounts to an offence and they have a common intention to do that act, they would all be equally liable for the consequences.

3. The evidence given by the defence to show that they were not present at the place, where the occurrence is said to have taken place, has been very carefully analysed and considered by the lower Court and we accept the conclusions that it has come to on the point. We think that the conviction under Section 126 of the Railways Act must be confirmed.

4. As regards the conviction under Section 143, Indian Penal Code, no argument has been addressed to us to show that the accused are not guilty under that section. We confirm the convictions of the accused. As regards the sentence, we think, that it is by no means excessive, considering the very serious character of the offence committed and we confirm it. The appeal is dismissed.

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