

In Re: Athipalayan and ors.

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Court : Chennai

Decided On : Feb-09-1960

Reported in : (1960)2MLJ450

Appellant : In Re: Athipalayan and ors.

Judgement :

ORDER

Ramaswami, J.

1. This batch of revision cases raises a point of considerable importance in the day-to-day administration of justice. It relates to announcing sentence before judgment which is the final decision of the Court intimated to the parties and the world at large by formal pronouncement of delivery in open Court by the trial Judge and signing and dating it simultaneously and thereby terminating the criminal proceedings finally (Halsbury 2nd Edition, Vol. 9), pages 260-264: Emperor v. Maheswara Kondayya (1908) 31 Mad. 543, Madho Singh v. Emperor (1940) 41 Cri.L.J. 725, Kuppuswami Rao v. The King , Hori Ram Singh v. Emperor , Surya Rao v. Sathiraju : AIR1948 Mad510 , Surendra v. Stale of Uttar Pradesh : 1954 CriLJ475 , Basanta Kumar Pal v. Kamini Mohan Pal A.I.R. 1957 Tri 55.

2. One Sri K. Ramanujam, the Sub-Magistrate of Rasipuram, has convicted the accused in C.C. Nos. 2101, 2113, 2236 and 2257 of 1959 under Section 4(1)(j) of the Madras Prohibition Act. In all these cases the accused has been sentenced to

undergo rigorous imprisonment for two months and to pay a fine of Rs. 5. It has been proved beyond doubt and the Magistrate himself admits it, that in none of these cases he wrote judgments and pronounced them and signed and dated them in open Court as required by Sections 366 and 367 of the Code of Criminal Procedure. We are not concerned with the *ad misericordiam* explanation and that is a matter for the Administrative Department of the High Court to settle. We are only concerned with this reference made by the District Magistrate that during his surprise inspection of the Rasipuram Court he found that judgments had not been written at all and that the Magistrate had merely noted in the docket sheet the conviction and sentence. Therefore, the District Magistrate has made this reference requesting the High Court to set aside the convictions and sentences.

3. The learned Public Prosecutor brings to my notice the following decisions on this point : *Bandanu Aichayya v. Emperor* I.L.R. (1903) Mad. 237, where a judgment in a criminal trial was written and delivered some days after the prisoners were convicted and sentenced; and it was held that this was a violation of Sections 366 and 367 of the Code of Criminal Procedure and was more than an irregularity; because it was a defect which vitiated the convictions and sentences. *Queen Empress v. Hargobind Singh* I.L.R. (1892) All. 242, approved and *Jhari Lai v. King Emperor* I.L.R. (1929) Pat. 904, where the essential parts of the judgment, that is, the statement of points for determination and the reasons for the decision, were not prepared until three weeks after the pronouncement of the judgment in open Court, and it was held that the defect vitiated the conviction and sentence. *Queen Empress v. Hargobind Singh* I.L.R. (1892) All. 242, and *Bandanu Atchayya v. King Emperor* I.L.R. (1903) Mad. 237. Passing sentence before recording a Judgment is dated and signed is illegal : *Gulla v. Emperor* I.L.R. (1893) Cal. 121, *Queen Empress v. Kamthia Girdharia* A.I.R. 1923 Rang. 44. A judgment before delivery is a mere opinion; it becomes a Judgment only if pronounced and signed and dated: *Nundeput Mahta v. Alexander Shaw* I.L.R. (1896) Cal. 504, *Ramdhur, In re* (1913) 14 Cri.L.J. 562, *Surendra v. State of Uttar Pradesh* : 1954 CriLJ475 , and *Savarimuthu v. Muthu Pillai* (1916) 32 M.L.J. 81 : 40 Mad. 108. Delivery must be in open Court. It must be by the Judge and cannot be delegated. It is not a mere formality. *Damu Senapati v. Sridhar Raiwar* I.L.R. (1893) Cal. 121, *Rambit v. Emperor* A.I.R. 1923 Rang. 44, *TUak Chandra Sarkar v. Baisagomojf* I.L.R. (1896)

Cal. 504.

4. It is unnecessary to further buttress by citations the elementary point of the glorious Anglo-Saxon Criminal Jurisprudence that we administer that firstly no one can be tried or sentenced in absentia (except in petty cases and when represented by a pleader) secondly, the judgment must be pronounced in open Court, signed and dated; and thereby that if these formalities are not strictly complied with, the conviction and sentence cannot be sustained and they become illegal and there is no question of any irregularity being cured because it is almost impossible that no prejudice thereby will be caused to the accused. This irregularity will amount to an illegality vitiating the conviction and sentence because, as I have just stated it is one of the glorious principles of our criminal jurisprudence that we do not try or sentence people in absentia and we do not also convict and sentence people without judgments being pronounced in open Court and signed and dated then and there. It may be different in the continental system of criminal jurisprudence.

5. Therefore, the references by the learned District Magistrate of Salem are accepted and the convictions and sentences in these cases are set aside. I do not order a re-trial in the context of these cases. This atrocious behaviour on the part of the Sub-Magistrate which plainly unfits him for the discharge of his duties will naturally be adequately dealt with on the Administrative Side of this Court.

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