

In Re: Mooka Nadar and ors.

In Re: Mooka Nadar and ors.

SooperKanoon Citation : sooperkanoon.com/809185

Court : Chennai

Decided On : Jan-08-1942

Reported in : AIR1943Mad590; (1943)1MLJ352

Appellant : In Re: Mooka Nadar and ors.

Judgement :

Horwill, J.

1. The five appellants were found by the Sessions Judge of Madura to have been members of an unlawful assembly who went to the field of the deceased person and took possession from him. The first three accused were convicted under Section 148, Indian Penal Code, for rioting armed with deadly weapons and sentenced to three years' rigorous imprisonment. The other two appellants were found guilty under Section 147, Indian Penal Code and sentenced to two years' rigorous imprisonment. The first accused was also found guilty under Section 324, Indian Penal Code for the specific injury caused by him and sentenced to three years' rigorous imprisonment.

2. It cannot be denied that the party of the appellants and the party of his opponents met on the field, the possession of which is in dispute, and that they attacked one another and inflicted injuries on several persons present. The principal question in dispute is whether the deceased, who was in the party of the appellants, was in possession of the field on the day of dispute or P. W. 2. The

evidence on that point is very meagre indeed. It seems to be true that the party of P. W. 2 were on the field first on the morning on which this offence happened; but that does not necessarily mean that they were then in possession of the field. A person does not lose possession of a field by going home to have a meal, or to sleep. If somebody enters on his land during his absence and he does not acquiesce in the trespass, he would still retain possession of the land; and as the possessor of the land, he is entitled to defend that possession. If he brings friends with him and with force of arms resists those who are trespassing on the land, who are also armed, he and his friends would not be guilty of forming themselves into an unlawful assembly; for those who defend their possession are not members of an unlawful assembly. If a person acquiesces in his dispossession and subsequently under claim of title comes again to dispossess his opponents, then he and his friends would be members of an unlawful assembly and guilty of rioting.

3. The real question to be decided is whether the deceased was dispossessed by virtue of two agreements entered into by him and P. W. 2. * * *

[After discussing the question, His Lordship continued :]

4. With the prosecution case resting only on the evidence of P. W. 5 on the one hand, and there being the evidence of D. Ws. 1 and 2 on the other hand, the accused are entitled to the benefit of the doubt. On the charge under Section 147, the burden is on the prosecution and they have not discharged it. Even with regard to the charge under Section 324 where the burden is on the accused to show that they had a right of self-defence, I think, the accused might be said to have discharged the burden in view of the fact that D. Ws.1 and 2 have deposed in their favour and it has not even been suggested in cross-examination that their statements were not true.

The appeal is therefore allowed and all the accused acquitted on both charges.