

In Re: Kasthuriengan and ors.

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SooperKanoon Citation : sooperkanoon.com/809591

Court : Chennai

Decided On : Jan-21-1970

Reported in : (1970)2MLJ83

Appellant : In Re: Kasthuriengan and ors.

Judgement :

ORDER

K.N. Mudaliyar, J.

1. A-1 to A-13 and A-15 are the petitioners.

2. The entire occurrence was a sequel to an agrarian dispute. The facts and findings are elaborately set down in the judgments of the two Courts below. In the circumstances of the case and on the facts proved, the learned Counsel was unable to question the correctness or the propriety of the convictions of A-1 to A-8.

3. The learned Counsel placed reliance on the finding of the learned Assistant Sessions Judge in paragraph 14 of his judgment,

The circumstances mentioned reveal that the prosecution has improved the case so far as the complicity of A-9 to A-13 and A-15 is concerned and specific overt acts have been attributed to them only subsequently. The fact that P.W. 1 had stated in Exhibit P-1 and subsequently reiterated before the Committing Magistrate, that some unknown persons also beat him and when P.W. 1 is unable

to mention on which parts of the body, persons other than the accused beat him, it is doubtful, whether the specific overt acts now attributed to A-9 to A-13 and A-15 can be true. Since the benefit of every reasonable doubt must be given to the accused, I am satisfied, that A-9 to A-13 and A-15 cannot be held to be guilty of having caused hurt to P.W. 1 or having committed the specific acts attributed to them by P.W. 1 in evidence,

and argued that inasmuch as specific overt acts have been disbelieved by the trial Judge, the very presence of these accused, A-9 to A-13 and A-15 at the scene of the occurrence, must be doubted. I am unable to accept this argument. The learned trial Judge has succinctly given the finding as follows ;

As regards the other accused (A-9 to A-13 and A-15) the evidence on record makes it clear, that while A-1 to A-8 had individually played specific parts, A-9 to A-13 and A-15 were only members of the unlawful assembly, which had the common object of beating P.Ws. 1 to 3 and causing hurt to them.

The Counsel did not argue that the names of A-9 to A-13 and A-15 were not mentioned in Exhibit P-1. There is only a general statement that these accused, along with the others, beat P.Ws. 1 to 3. It is true that no specific overt acts have been mentioned in detail in Exhibit P-1, and therefore the proof of specific overt acts against these accused did not command any acceptance by the trial Judge.

4. The argument of Mr. Venkataraman would boil itself down to this. The prosecution charges A, B, C, D and E with specific overt acts and when it fails to prove them, there must be a mechanical or automatic acquittal under Section 147, Indian Penal Code. I do not accept this argument for the simple reason that the terms of Section 146, Indian Penal Code, would make it clear that when force or violence is used by an unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of ' rioting'. The finding that A-1 to A-8 had used 'force or violence' against P.Ws. 1 to 3, and have been convicted properly for certain specific offences would render the other members of the unlawful assembly who shared the common object of such assembly, undoubtedly guilty of the offence under Section 147, Indian Penal Code.

5. In support of his argument, Mr. Venkataraman cited Baladin v. State of U.P. : 1956 CriLJ345 ; Veeraiah v. King : (1948)2MLJ107 and Sumbandam v. State (1954) 1 M.L.J. 497 : (1954) M.W.N. 28. I really derive no support for the validity of such an argument from the rulings cited above. For the view expressed by me on the guilt of A-9 to A-13 and A-15, for an offence under Section 147, Indian Penal Code, I derive considerable support from the decision reported in Masalti v. State of U.P. : [1964]8SCR133 , and Ramu Gope v. State of Bihar (1969) 1 S.C.J. 939 : (1969) M.L.J. 482. In the light of the reasoning in the judgment reported in Ramu Gope v. State of Bihar (1969) 1 S.C.J. 939 : (1969) M.L.J. 482, it is impossible for me to accept the argument of Mr. Venkataraman.

6. Now, that I have held that the convictions of A-9 to A-13 and A-15, under Section 147, Indian Penal Code, are proper, it follows automatically that the constructive liability of these petitioners for the acts of A-1 to A-8 is also proved.

7. Mr. Venkataraman appealed for clemency of the Court in regard to the sentence of imprisonment awarded against A-9 to A-13 and A-15. Inasmuch as they were acquitted of the specific overt acts attributed by P.W.s 1 to 3, I take that circumstance into consideration and reduce the sentence of imprisonment on them to six months' rigorous imprisonment both under Section 147, Indian Penal Code and also under Section 149, Indian Penal Code, read with the relative hurt-section. All the sentences imposed on them will run concurrently.

8. I see no grounds to interfere with the convictions and sentences on A-1 to A-8.

9. With the above modification, the revision petition is dismissed.