

**In Re: Gopalakrishnan and ors.**

**In Re: Gopalakrishnan and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/809644](http://sooperkanoon.com/809644)

**Court :** Chennai

**Decided On :** Nov-25-1937

**Reported in :** AIR1938Mad390

**Appellant :** In Re: Gopalakrishnan and ors.

**Judgement :**

**Venkaramana Rao, J.**

1. In this case, the case for the prosecution was that on 1st November 1936 accused 1 to 7 formed themselves into members of an unlawful assembly with the common object of causing injury to P.W. 3 and wresting from his possession the goods which were suspected to be smuggled and forcibly removed from their possession. The learned Sessions Judge has acquitted accused 3, 4, 6 and 7 but convicted accused 1, 2 and 5. All that was found against accused 1 and 2 was that they were found to be present at the scene of offence and that accused 5 ran away with the bundle which fell from the hands of P.W. 3 during the course of the scuffle with the assailants. There is no reliable evidence as to whether more than five took part in the attack against P.W. 3 and most of the witnesses who were called on the side of the prosecution have been disbelieved by the learned Sessions Judge. He therefore acquitted four out of the seven persons charged with the offence of rioting. It seems to me that accused 1, 2 and 5 should also have been acquitted: see *Ata Muhammad v. Emperor* (1923) 10 AIR Lah 692, and the view taken in this case has been taken also in this High Court. There is also

authority in England for this view: see *Rex v. Plumber* (1902) 2 KB 339. I therefore set aside the conviction of and the sentence passed on accused 1, 2 and 5 and direct them to be set at liberty. Their bail bonds are cancelled.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**