

In Re: Subbaraya Ayyar and ors.

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Court : Chennai

Decided On : Jan-23-1941

Reported in : AIR1941Mad658

Appellant : In Re: Subbaraya Ayyar and ors.

Judgement :

Horwill, J.

1. Fourteen men were charged by the Sessions Judge of Trichinopoly with being members of a gang associated for the purpose of habitually committing theft or robbery, an offence punishable under Section 401, Penal Code. Of these fourteen accused, four have been acquitted. The remaining accused were sentenced each to two year's rigorous imprisonment. Of these ten accused convicted, five are here appealing. They are accused 3, 7, 8, 12 and 13.

2. Most of the accused are Ambalagars, a community connected with the Kallars and Maravars. Accused 1 to 3 are Pallas, accused 9, who has been acquitted, is a goldsmith. Accused 8 is a Brahmin. The main argument with regard to accused 8 is that there is very little evidence of association with the gang apart from the evidence of P.W. 1, the approver. The reason for this seems to be this, that this accused contributed more towards the organization of the gang than to the execution of the individual acts of theft or robbery. P.W. 1 says that this accused did not actually take part in any of the thefts or robberies. However, there is a not

inconsiderable body of other evidence against this accused. He made a confession proving that he was connected with this gang in a particular theft and certain articles of clothing were recovered from him in consequence of this confession. It has been argued that this confession is not admissible; but as it led to the discovery of articles which were the subject of theft, it is clearly admissible; under Section 27, Evidence Act. Two other witnesses, P. Ws. 8 and 6, have spoken to his association with other members of the gang and P. Ws. 11, 12 and 28 have also spoken against him. As a Brahmin and a Mirasdar, his habitual association with persons of evil repute is itself a matter of suspicion, and he has given no satisfactory explanation of his association with such persons. In fact he denies it. Although the learned Judge did not marshal the evidence against this accused, it is not likely that the jury overlooked the particulars of evidence against this accused. A slight misdirection was given to the jury as far as this accused is concerned with regard to a theft which had taken place about a fortnight or so before the recovery of property from him, in which the learned Judge said that this, recovery indicated that this accused had taken part in the theft. The learned Judge did not indicate the alternative that the accused might have been a receiver of stolen property; but, in view of the accused's own confession, I do not think that this misdirection is a serious one. I agree that the learned Judge should have concluded his charge with a summary of the evidence against each accused, so that the jury should be quite clear in their minds what evidence there was against each of them. A considerable body of evidence was let in and there was a danger that the jury should decide by general impressions rather than by a memory of the actual facts proved in the evidence. However, as far as this particular accused is concerned, there is no reason to think that even if the charge had not been subject to this defect the jury would have acquitted him.

3. Accused 3, 7, 12 and 13 made no confessions of their guilt as so many others of the accused did, nor was any property recovered from their possession. The evidence of P.W. 1 was corroborated, therefore, only by the evidence of certain witnesses who speak to these persons associating at shandis or toddy shops. In the case of accused 8 four persons have spoken to his association with other members of the gang on various occasions, three persons have spoken to the association of accused 12 and two witnesses each to the presence of accused 7

and 18 in assemblies of members of the gang. There is no fixed rule that a Judge should summarise separately the evidence against each accused and the learned Sessions Judge here has analysed the evidence of each witness fairly; but clearly he should have done /so. It is difficult to know what effect such a marshalling of evidence would have had on the minds of the jury; but if it had been pointed out how weak the evidence was against accused 7, 12 and 13 they might well have been found to be not guilty. The evidence of the two witnesses who speak against accused 7 and 18 is rather vague. The evidence against accused 12 is the same as that against accused 7 and 13 except for the addition of the evidence of P.W. 4 which the learned Judge told the jury was unworthy of acceptance. Ordinarily, if an omission of this sort takes place, one would remit the case for fresh trial; but as the evidence against these three accused is so (slight, I do not think it is in the interests of justice to subject them to a fresh trial. I therefore allow the appeals of accused 7, 12 and 13, set aside their convictions and cancel their bail bonds. The convictions and sentences of the other accused are affirmed and their appeals dismissed.