In Re: Virumandithevan and anr.

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SooperKanoon Citation : sooperkanoon.com/811962

Court : Chennai

Decided On : Mar-28-1927

Reported in : AIR1928Mad207

Appellant : In Re: Virumandithevan and anr.

Judgement :

1. The appellants have been convicted under Section 394, I.P.C., and sentenced to five years' rigorous imprisonment, by the Sessions Judge of Ramnad Division. The appellants were tried for an offence under Section 395, and the charge as read out to them is in the following terms:

That you along with others numbering five and more on or about the 9th June 1926, at Virudunagar during night did commit dacoity and thereby committed an offence punishable under Section 395 I.P.C., and within my cognizance.

2. The jury found that five people did not take part in the occurrence and their verdict was that both the accused were guilty of robbery in which hurt was voluntarily caused. The contention of Mr. Vaz for the appellants is that the conviction on a charge which was hot specifically placed before the jury and to which the accused were not asked to plead is irregular. The learned Public Prosecutor contends that the offence under Section 394 is a minor offence and, therefore, it was open to the Judge without framing a formal charge under Section 394 to ask the jury to say whether they found the appellants guilty under Section 394.

3. We think that in cases tried by jury the charge should be specifically stated and explained to the jury and the accused should be called on to plead to the specific charges on which they are tried. In cases tried by a Judge or a Magistrate there may not be any prejudice if the charge is altered after the trial to one under a minor offence when the trial itself was for a major offence. But in cases tried by the jury we think the accused ought to be asked to plead to every one of the charges and the jury must be called upon to weigh the evidence with reference to each of the charges. The offence under S. S94 cannot be said to be a minor offence so far as the dacoity is concerned. The offence under Section 394 is not necessarily an ingredient of the offence of dacoity. There may be dacoity without hurt being caused, but in the case of an offence under Section 394 hurt is one of the essential elements and if no hurt is caused in committing dacoity the offence under Section 394 would not be made out. In this case the evidence is that some hurt was caused and we do not think that that was sufficient to put the accused on notice that they were being tried for an offence under Section 394.

4. We confine our remarks only to jury trials and we think that the charges upon which the accused are to be tried and upon which they are likely to be convicted should be specifically mentioned and the verdict of the jury should be taken on each of such charges. The accused in this case have been acquitted on a charge of dacoity and we think that their verdict as regards Section 394 is vitiated by there not being a specific charge under Section 394 against the accused. We, therefore, set aside the conviction and sentence and direct that the accused be retried on a charge under Section 394. In framing the charge the Judge will also add charges under Sections 392 and 379, I.P.C. The accused may continue on the same bail.