

Annavi and ors. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/813006

Court : Chennai

Decided On : Mar-25-1924

Reported in : AIR1925Mad364

Appellant : Annavi and ors.

Respondent : Emperor

Judgement :

ORDER

Venkatasubba Rao, J.

1. The charge framed against the fourth accused runs thus:

That you.... abetted, by being present, in the commission of the offence of mischief.... and thereby committed an offence punishable under Sections 430 and 114, Indian Penal Code.' Section 114 of the Indian Penal Code implies that the abetment had been completed before the actual offence was committed. It reads thus:

Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed, such act or offence.

2. What is it that the section contemplates? It is dealing with a person who would be guilty of abetment independent of any act done at the time of the offence, that is to say, a person whose abetment is complete apart from his presence. The section defines the liability of such a person if he happens to be present when the offence is committed.

3. No acts are alleged on the part of the fourth accused which relate to a point of time previous to the commission of the offence. The case sought to be made out against him is that he was at the place where the offence was committed and instigated the other accused to commit the offence at the time they committed it. In the words of Sir Lawrence Jenkins, C.J., in *Ram Ranjan Roy v. Emperor* (1915) 42 Cal. 422 the only abetment charged necessarily required the presence of the accused while to come within Section 114 the abetment must be complete apart from the presence of the abettor.

4. The next question is, has the fourth accused been misled by this error in the charge and has it occasioned a failure of justice? It seems to me that the fourth accused did not have notice of the matter with which he was charged. When prosecution witnesses did not allege that he committed any act previous to the commission of the offence he would be justified in believing that no evidence of his guilt was being given and it is extremely difficult to say that he has not been misled and that there has not been a consequent failure of justice.

5. On the whole I think it is safe to set aside his conviction and the sentence and I, therefore, do so and direct that he shall be re-tried on a charge properly framed. The fine, if it has been collected, shall be refunded.

6. As regards the rest of the accused, the sentence is reduced to the term of imprisonment already undergone. In regard to the sentence of fine, I reduce it to Rs. 20 in the case of each of the accused. And the excess fine, if collected, will be refunded. In default, each shall undergo rigorous imprisonment for a period of two weeks.

7. The order directing payment of compensation to P.W. No. 1 will stand.

