

Arumuga Kone Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/813607

Court : Chennai

Decided On : Feb-22-1927

Reported in : AIR1928Mad275; 108Ind.Cas.214

Appellant : Arumuga Kone

Respondent : Emperor

Judgement :

ORDER

Srinivasa Aiyangar, J.

1. This case has been referred to the High Court by the Sessions Judge of Tinnevely under Section 438, Criminal P.C. The case was tried by the Assistant Sessions Judge of Tinnevely with a jury. The accused was originally charged under Sections 434, 392 and 397, I.P.C., all of which offences are triable by a jury. While the jury returned a verdict of not guilty with regard to the counts under the said section, they at the same time found the accused guilty of voluntarily causing hurt by a dangerous weapon. The offence, [Under this last section, is under the Criminal Procedure Code, triable by a Judge only with assessors. The ground on which the reference has been made by the Sessions Judge is that the procedure adopted by the Assistant Sessions Judge was wrong and that if it was intended to convict the accused for the offence under Section 324, the opinion of the members of the jury should have been taken individually as assessors and the conviction

should be by the Court and that it should have been embodied in a judgment.

2. It appears that when the learned Sessions Judge asked the Assistant Sessions Judge for an explanation with regard to the procedure adopted, he referred to and relied upon certain observations in the case of Pattikadan Umaru v. Emperor [1903] 26 Mad. 243.

3. The first point that falls to be observed is that though the learned Judge has pointed out the alleged irregularity in the trial, he has not referred to anything which may be regarded as indicating any miscarriage of justice by reason of the irregularity in the trial.

4. Section 536, Criminal P.C., Clause 1, lays down that

if an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground be invalid.

5. On a proper interpretation of that section it follows that no conviction or sentence passed in such a case should be set aside or interfered with unless it is clear that the irregularity has led to some miscarriage of justice. There is nothing in the reference by the learned Sessions Judge to show that there has been in this case any miscarriage of justice whatever in consequence of the alleged irregularity.

6. This is not an appeal by the accused in which case there might arise a question such as was raised in the said case of Pattikadan Umaru v. Emperor [1903] 26 Mad. 243. On a mere revision it seems to me that, in the absence of anything to indicate that there has been miscarriage of justice it is not necessary that this Court should interfere.

7. As regards taking the opinion of each of the members of the jury separately as assessors there is no substance so far at least as the present case is concerned because the verdict of the body was unanimous. If it was not unanimous, questions might arise as regards the value of the opinions of those who differ.

8. As regards the ground that there has been no separate judgment of the Judge with regard to the matter, I am unable to regard even that as material because the charge to the jury by the learned Assistant Sessions Judge was very careful and well considered. The learned Sessions Judge accepted the verdict agreeing with it. I am not therefore satisfied that this is a case in which this Court is called upon to interfere.

9. In the view I have taken, it seems to me to be unnecessary to express any opinion with regard to the points that arise on the reference. In this respect there is no doubt there is some little conflict or confusion in the Code itself. Section 238, provides that the tribunal which tries a person for the major offence may itself convict him of the minor offence although he may not have been charged with it. In Section 269 it is directed that the members of the jury should themselves act as assessors when, in the same trial, a person is charged with some offences some of which are triable by a jury and others are triable by the Judge with assessors. But obviously this latter section would not apply to a case where a person is not in the first instance charged with the commission of such offences and the conviction comes to be made under Section 238 without a charge. But, however, as I am satisfied that the question does not really arise for determination in this case, I do not wish to express my final opinion in the matter.