

In Re: S. Kusungadu

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SooperKanoon Citation : sooperkanoon.com/815106

Court : Chennai

Decided On : Oct-08-1924

Reported in : AIR1925Mad466

Appellant : In Re: S. Kusungadu

Judgement :

1. This is a reference from the learned Sessions Judge of Ginjam, submitting the records in Sessions Case No. 27 of 1921, in which the jury unanimously found the accused not guilty of offences under Sections 457, 392 and 394 of the Indian Penal Code. The learned Judge, considering the verdict perverse, has sent up the casa to this Court, with a recommendation that the verdict be set aside and the accused convicted.

2. The facts are simple. The prosecution casa is that on the 1st day of June, 1924, at night, the accused entered the house of P.W. 4, removing a thatty door, in order to enter, that, after he got into the house, P.W. 4's wife roused him, being taken on alarm, that P.W. 4 discovered the accused and cried out, that the accused ran away and P.W. 4 pursued him and caught him. The accused then struck P.W. 4 on the head, with an iron instrument, and also with P.W. 4's own chembu, which he had carried away. Four people came up on hearing P.W. 4's alarm, P.Ws. 5, 6, 7 and 8 and assisted P.W. 4 in securing the accused and he was then handed over to the Village Munsif.

3. The cross-examination of these witnesses does not discover any evidence of enmity between these witnesses and the accused, or of any reason why these witnesses should get up a false case against him. The accused simply pleaded that the witnesses as were all animated by enmity instigated by his sister's son. Of this, there is no evidence. We can see no reason why P.Ws. 4 to 8 should not be believed and we are satisfied that the accused was caught redhanded, having committed house breaking, in the house of P.W. 4 and abstracted from it a chembu, and, when P.W. 4 attempted to catch him and recover his property, the accused, in order to the carrying away of this property, caused hurt to P.W. 4. We therefore find that the accused committed offences under Sections 457, 392 and 394, Indian Penal Code, with which he is charged.

4. The verdict of the jury appears to us to be perverse. There can be no reasonable doubt, regarding the truth of the prosecution case and the verdict was consequently not justified. We therefore reverse the verdict of the jury and convict the accused, under the sections above-named.

5. We now have to consider the sentence. This has been a matter of some difficulty as the accused is a member of a Criminal Tribe, registered under Act III of 1911. The accused himself was registered on the 20th August, 1923, and this is his first conviction since registration. Section 23 of the amended Criminal Tribes Act VI of 1924 runs thus:

Whoever being a member of any criminal tribe and, having been convicted of any of the offences under the Indian Penal Code, specified in Schedule I, is convicted of the same or of any other such offence, shall be punished on a second conviction, with imprisonment for a term, not less than 7 years, provided that not more than one of any such convictions, which may have occurred before the 1st day of March, 1911, shall be taken into account for the purposes of this subsection.

5. The accused has had several convictions, before the 1st of March, 1911 and the date, of his registration as a member of a criminal tribe. But the proviso to Section 23 seems in our view to indicate that all his convictions before the coming into force of the Criminal Tribes Act, III of 1911, shall count as one and not more

than one.

6. The next question is whether the 2nd conviction may be conviction between the 1st March, 1911 and the date of the accused's registration, because during that period, the Criminal Tribes Act was in force, or whether the 2nd conviction must be after the accused has himself been registered as a member of a criminal tribe. *Re Sellamani* (1917) 40 Mad. 923 is authority for the proposition that the 2nd conviction must be, after the Criminal Tribes Act came into force; but there is no direct authority on the question, as to whether the 2nd conviction must be, after the accused has been registered as a member of a criminal tribe. Having regard to the language of the section, 'Whoever being a member of any Criminal Tribe and having been convicted etc.,' we think that the reasonable interpretation of the section is that the accused, at the time of this second conviction, must be a member of a criminal tribe, that is, that the 2nd conviction must be, after registration of the accused as such member. It would seem unreasonable that Section 23(1)(b) could be applied straightaway to an accused person to whom Section 23(1)(a) had never been applied. This is the first conviction of this accused person, after his registration. We therefore consider that this conviction is the accused's 'second conviction' within the meaning of Section 23, all his previous convictions, before he was registered as a member of a criminal tribe being reckoned as his '1st conviction'. He is therefore liable under Section 23(1)(a) of the Criminal Tribes Act to be imprisoned for a term of not less than 7 years. We therefore sentence him to rigorous imprisonment for seven years.