

In Re : Nalliveerathevan and anr.

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Court : Chennai

Decided On : Apr-23-1914

Reported in : 24Ind.Cas.351

Judge : Ayling, J.

Appellant : In Re : Nalliveerathevan and anr.

Judgement :

ORDER

Ayling, J.

1. The evidence certainly justified the conviction of second accused in the alternative under Section 379 or Section 411, Indian Penal Code, and also the conviction of 1st accused under Section 215, Indian Penal Code. I agree- with the Sessions Judge that the evidence does not support the conviction of 1st accused under Section 379 or Section 411, Indian Penal Code.

2. The legality of 2nd accused's conviction under Section 215 has next to be considered. It has been held in Queen-Empress v. Muhammad Ali 23Aa. 81. that this section was not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property without at the same time using all the means in his power to cause the thief to be apprehended and convicted. Whether the principle of the ruling would apply where the receiver of the gratification was also

in dishonest possession of the stolen property under Section 411, but not the actual thief, is open to argument. I express no opinion. But in the present case the 2nd accused has been convicted in the alternative of an offence under Section 379 or Section 411, Indian Penal Code, and I think the spirit of the ruling should apply, and the conviction under Section 215 should be set aside.

3. I see no reason to order a re-trial on the ground of misjoinder of charges : for the evidence of close association between the accused persons justifies the inference that the theft and retention of the cattle and their restoration on payment were all part of one plot and one transaction within the meaning of Section 239, Criminal Procedure Code.

4. I set aside the conviction of 1st accused under Sections 379, 411 and 75, Indian Penal Code, and that of the 2nd accused under Section 215.

5. The sentences are reduced to six months' rigorous imprisonment for each, accused.

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