

In Re: P. Ayamad and ors.

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Court : Chennai

Decided On : Mar-27-1923

Reported in : AIR1924Mad376(1)

Appellant : In Re: P. Ayamad and ors.

Judgement :

Ayling, J.

1. This case arises out of the Moplah rebellion. The appellants have been convicted of offences under sections 149 and 307 of the Indian Penal Code. The prosecution evidence shows that on 18th February, 1922, a band of about 25 armed Moplahs, including the appellants, came to the Paramba of P.W. 2 where he, along with P.Ws. 3 and 4 were engaged in husking cooanuts. The prosecution witnesses fled, but were pursued by the Moplahs with cries of 'shoot the dog.' The 1st aroused fired and wounded P.W. 2, but not seriously and the prosecution witnesses managed to escape. On the very same day P.W. 2 gave a complaint, Ex. B, naming the present appellants. The latter belong to the same amsom as the prosecution witnesses and are well known to them. No personal enmity is shown: and there seems to be no reason why the identification of the appellants should not be accepted. The evidence of the single defence witness examined is immaterial.

2. The appellants were not represented before us; but the learned Public Prosecutor has deemed it his duty to draw our attention to a point in connection with the charge, which might be argued in their favour. The charge runs thus:

That you on or about the 19th day of February, 1932; at Puthur, Calicut Taluq, formed an unlawful assembly with the common object of harassing Hindus in prosecution, of which accused fired at and hit Cheriayamana Nair, and thereby committed an offence punishable under Sections 148 and 807, Indian Penal Code, and within cognisance.³ In a similar case Referred Trial No. 88 of 1922, Oldfield and Devadoss, JJ., appeared to have held that the definition of the common object of the unlawful assembly in the charge was too general, and that the charge contained no averment on which the accused could be held responsible for the main offence charged (murder). They, therefore, set aside the conviction and ordered a retrial.

4. It is unnecessary to say that we treat this decision with greatest respect. It is, however, not reported and therefore not binding on us; and we conceive that it is our duty to determine whether in the case before us, there is any error, omission or irregularity in the case, which has in fact occasioned a failure of justice within the meaning of Section 537 of the Code of Criminal Procedure.

5. No objection was raised by the accused either in the lower Court or in their appeal petition, but as they have been unrepresented throughout, we lay no stress on this. The question is whether the phrase 'with the common object of harassing Hindus' either did not fall within the five heads of Section 141 of the Indian Penal Code or was too general to give the accused an idea of what they were charged with; or was such, that shooting at a man, could not be said to be done in prosecution of that common object.

6. We do not think any of these things can be said. The Special Judge has explained, in his judgment, that by the phrase 'Harassing' he meant 'vexing by repeated attacks' and the commission against Hindus of various offences such as criminal force, theft, etc., 'which are the object of these gangs when they assemble.' It is a matter of common knowledge that at this late stage of the rebellion, the efforts of the rebels were directed against their Hindu fellow-subjects

as well as against Government and I should myself understand the word 'Harass to imply the infliction of injuries on Hindus on person and property. I think it is in general accord with the definitions quoted in the judgment in Referred Trial No. 88 of 1922 from the Oxford and Century Dictionaries as illustrating the meaning of the word.

7. Such a meaning would fall within the scope of Clause 3 of Section 141 'to commit mischief or criminal trespass or other offence,' and where, as in the present case, the band of, harassers are armed with swords and a gun, I think each one of them must be credited with the knowledge that murder was lively to be committed in the course of this harassing.

8. It is possible to suggest a more definite and more appropriate phrase but I think the phrase used is sufficient to satisfy the requirements of the sections and to give the accused persons a sufficiently clear idea of the charge against them.

9. I would, therefore, confirm the convictions and the sentence on the 1st accused who actually fired. I would reduce the sentences of the others to seven years' transportation.

Odgers, J.

10. I agree with the judgment of my learned brother and were it not that the Public Prosecutor has raised an important point of pleading wherein we are constrained to differ from a decision of a Bench of this Court, which, how-ever, as has just been pointed out, is not binding on us, I should have said nothing. As it is, I only refer to the question as to whether the charge of unlawful assembly with the common object of harassing Hindus is too general and therefore unfair or unjust to the accused. The learned Special Judge explains that 'by harassing' he meant 'vexing by repeated attacks' a phrase which I see includes the various offences against Hindus criminal force, theft, etc. I respectfully agree with the passage in the judgment in Referred Trial No. 88 of 1922 (the decision referred to) 'what is necessary is that the accused shall have reasonably distinct notice of the common object imputed to them and of the manner in which that common object is to be brought within the language of Section 141.' In other words, does 'harassing

Hindus' fairly fall within the purview of the expression 'to commit any mischief or criminal trespass or other offence' in Section 141? In my opinion it does. It is matter of common knowledge that one of the main objects of the Moplah rebellion came to be the conversion of Hindus to Islam and to force them to this by attacks on their persons and property. The accused are said to be five of twenty-five Moplahs who attacked with guns and swords four Hindus husking cocoanuts. I would hold that 'harass' in its dictionary meaning of 'to annoy by repeated attacks, to carry, lay waste, devastate, plunder, to trouble, vex by repeated, attacks' is, within, the language of Section 141(3) and that this expression does convey to the accused the common object of the assembly alleged and the manner in which it is sought to bring the common object within the language of the Indian Penal Code. The plea was never raised at any stage by the accused and I think it is quite clear that not only were they not in fact under any disadvantage by reason of the language of the charge but they have no ground for complaint in law for the reasons I have given.

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