

(1928) 04 MAD CK 0012
In the Madras High Court

In Re: Muhammad Salia Rowther and Others

Date of Decision : 20-04-1928

Acts Referred:

Citation : (1928) 28 LW 509 : (1928) 55 MLJ 624

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—Several points are urged by Mr. Vaz in this case and the only point that needs consideration is whether the Magistrate who

tried the case was justified in overlooking certain documents filed by the defence at the close of the case. One of them is a telegram purported to

have been sent by the 1st accused to the 2nd accused on 1st April, 1926. Another is a receipt for 12 annas for the cost of the telegram. The third

is the post card said to have been written by the 2nd accused to the 1st accused in reply to the telegram on the 1st April, 1926 from Madura and

the fourth is a railway ticket from Egmore to Madura, dated 4th April, 1926. These documents were put in along with the statement of the

accused. The Magistrate remarked:

These records have not been put in through proper channel. Nor have they been subjected to cross-examination. And, therefore, I refrain from

commenting upon these unproved records as they have not been exhibited in this case.

2. Where a document is written by the accused, whether it be a letter or any other document, it is open to the accused to file it in Court along with

his statement. It may be that there is no witness to speak to the actual writing of the document; but the Court is bound to consider the document

along with his statement. It may be that the statement of the accused is not

true, but in order to see whether the documents are relevant or irrelevant, the Court must look into them, see what they purport to be and then consider the statement of the accused that he wrote them, or that he sent them or that he received them and then decide the case. It is not open to a Criminal Court to shut its eyes to the statement of the accused when that statement refers to certain documents to which the accused is a party. Under the law the Court is bound to consider the statement of the accused. The Court may not be satisfied with the statement of the accused and may require further proof and if further proof is not forthcoming, it may decline to act on it. But no Criminal Court is justified in brushing aside the documents to which the accused are parties when the accused themselves file those documents in Court along with their statements. As the accused cannot give evidence on oath, they can only file a statement or refer to some documents to which they have been parties. I think this action of the Magistrate has vitiated the trial of the case. Mr. Govinda Menon for the Public Prosecutor contends firstly that these documents do not relate to the date of the occurrence, and secondly at best they can only refer to the case of 1st accused. The prosecution case is that it was the 1st accused who engineered the whole; thing, and at his instance the rioting was committed. It is open to the jury to come to the conclusion that the case against one of the accused is false and consequently that it could not rely upon the prosecution evidence as regards the rest of the accused. That is a matter entirely for the jury and it cannot be said that the Judge would only disbelieve the case of the prosecution so far as the 1st accused is concerned and not with regard to the rest. I set aside the conviction in this case and order a re-trial. The District Magistrate will forward the records to any Magistrate other than the Magistrate who tried the case.