
(1918) 02 MAD CK 0041
In the Madras High Court

Krishna Ayyar and Another, Palani Goundan and Others and
Ammasai Goundan

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 25-02-1918

Acts Referred:

Citation : 49 Ind. Cas. 337 : (1918) 8 LW 225

Hon'ble Judges : Napier, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. Twenty three persons were convicted by the Sessions Judge of Coimbatore of the offences of rioting, grievous hurt and other allied offences. Of these, some have appealed to us and we will have to deal with the case of each of them separately. Information" was given on the 19th "of, May last year at the Annur Police Station of a theft committed in the house of a Valayan. It appears that the Police searched "the houses of some persons within the limits of the Police station and then on the 20th in the morning the Sub Inspector, prosecution 1st witness, along with some constables and others came to a village called Molakalipalayam. which is within the Jurisdiction of the Sulur Police Station. Molakalipalayam is about two or three miles from Annur. There the houses of some of the Goundans were searched and in the house of accused No. 20, who, it may be mentioned, has not preferred any appeal, a cloth was found which was identified as part of the stolen property. The man was arrested and kept in custody. Some of the Goundans of that village and of a neighbouring village called Valayapalayam are alleged to have remonstrated with the Police against searching Goundans" houses, but the Sub-Inspector would not listen to them. He apparently had some information about the stolen property and he was not to be deterred from what he considered his duty to search in those villages for the stolen property. The 20th accused was kept at Molakalipalayam in the custody of two Police constables and the Sub-Inspector along with other policemen went on to Yalayapalayam. There can be no doubt upon the. evidence that his intention was to investigate the case and to search some houses where he had information

that the stolen property was concealed. The Goundans of the locality, according to the evidence, were much excited. They raised strong objections to the Police searching Goundans' houses. Accused No. 1, the Karnam of Mopperipalayam, and accused No. 21, the Village Magistrate of the same place, who were sent for, were present at Valayapalayam and they were appealed to by the Police to help them in making the search. What their actual conduct on the occasion was, is one of the points for consideration in their case. The case for the prosecution is that they not only refused to render help to the Police, but abetted the Goundan villagers in assaulting them and preventing them from carrying out any search in Valayapalayam. A large crowd of about 300 people gathered there. Accused Nos. 2 and 8, who are said to be prominent villagers, joined in the protest, and the mob did not allow the Police to search any of the houses there. The Police were attacked and beaten. They tried to frighten the mob by firing one or two shots in the air, but the mob was in a truculent mood and attacked and beat the Police. The Sub Inspector ran away to a place called Muthugoundanputhur; which is in the same direction as the Annur Station, from Valayapalayam. There he took shelter in a house, but the mob followed him, dragged him out of the house, put him in a jutka and having disabled the pony of the jutka, dragged the jutka with the Sub-Inspector to a temple at Valayapalayam and kept him there. On the way the mob seems to have tilted the Sub-Inspector out of the cart several times purposely- as if he was, use the language of the Sessions Judge, so much rubbish. One or two constables were also taken to the temple and kept there. That, broadly speaking, is the outline of the case for the prosecution. The policemen were all very severely handled and the Sub-Inspector was mercilessly beaten. One of his legs was broken. He had a number of injuries on his head and suffered apparently from concussion of the brain. He was nearly for three weeks in the hospital and was not able to speak rationally for some days. Some of the Police constables also received severe beating. Some Valayans belonging to the complainant's party were also beaten and; one of them bore a severe injury. Information being given as to what had happened, reinforcements came from the Annur Police Station and the injured policemen were rescued.

2. It ought also to be mentioned that on the same day, an old man called Sellappa Goundan was murdered. The evidence as to how and under what circumstances this man came to be murdered is not very full, and it is not possible, upon such evidence as there is, to find who was responsible for his death. It appears to have been suggested on behalf of the prosecution that the accused or their friends deliberately killed the old man in order to make out a case against the Police. On the other hand, the defence seems to have suggested that Sellappa Goundan was attacked by a number of men about thirty in number, probably belonging to the Police Party. The Sessions Judge was unable upon the evidence placed before him to fix the responsibility for the death of Sellappa Goundan on either party, or on any of the persons concerned in this case. In his opinion it might have been an incident quite apart from the main riot or it might have been a deliberate act done by the accused in order to shift

the blame for the occurrence on to the Police ; and We must say that we are unable to come to any more definite conclusion with respect to this most unfortunate incident. We do not even know what investigation was carried out and what attempts were made to find out who was responsible for this murder.

3. To come tack to the case before us, the defence of the accused on the merits apparently was that the Police beaded by the Sub-Inspector, prosecution 1st witness, went on the night of the 19th to the village of Valayapalayam and looted the Donees of some Yalayans and committed rioting. Prosecution 1st witness is charged with having been drunk and in fact with having run amok. It is said that he repeated the same conduct on the 20th. Bat there cannot be any doubt that the finding of the Sessions Judge that this story is not made out by any evidence worth mentioning, is correct. If there Was truth in this defence, one would have expected that abundant evidence would have been for the coming to prove the charge, which is a very serious charge, against prosecution 1st witness and the other policemen concerned. Some of the defence witnesses do give some vague evidence on the point, but none of them profess to give any particulars upon which a definite finding could be based. Similarly, in the cross-examination of the witnesses for the prosecution, this story was hardly put to them. One or two stray questions were Asked of some of the witnesses suggesting that the Police were acting illegally and aggressively An the village of Valayapalayam. But the attempt -to elicit any facts from prosecution witnesses which" would support the defence in this connection is absolutely faint-hearted, and we cannot place the least reliance upon such evidence for the defence as has bees adduced in this connection. No doubt, this was the story which accused Nos 3 and 17 told the Village Magistrate of Mopperipalayem and got embodied in the report Exhibit XIII. But there also the statements are vague to the extreme and Exhibit XII bears internal testimony of this story being a concoction.

4. Before dealing with the- evidence, we ought to deal with the question of law which was raided in the case, namely, whether " there has been a misjoinder of charges. The charges are With reference to the occurrence, at Valayapalayam and Muthugou Bdanputhu and also what happened in the afternoon at Molakalipalayam in the matter of the rescue of accused No. ?0. There is-no charge with respect to anything that was done by the accused persons at Molakali-palayam in the morning. The contention is that there were three separate occurrence and that they could not be the subject of charge in one and the same trial. The whole question rests on whether the occurrence on the 20th, as alleged by the prosecution, amounted to one transaction within the meaning of Section 235 of the Code of Criminal Procedure, that is to say, whether the series of acts charged against the accused were so connected together as to form the same transaction. If they formed one transaction, there can be no doubt that the charges were rightly joined. As to the Scope and interpretation of Section 235, the matter was considered recently by a Bench of this Court in Choragudi Venkatadri v. Emperor 5 Ind. Cas. 847, There it is pointed cut that it is hardly possible to lay down in abstract terms, which would be any more definite

than the language of the section itself, what would amount to one and the same transaction. Each case must depend upon its own facts, the general test being whether the acts charged were so connected together as to amount to one transaction. The connection in some cases would have to be sought in a common purpose running through all the acts or in the nature of the occurrence, having regard to the cause and the time and the place, it is pointed-out in *Choragudi Venkatadri v. Emperor* 5 Ind. Cas. 847 that the effect of the decision on Section 255 is that at least in a certain class of cases--the case there under consideration being one of them--community of purpose or design and continuity of action are essential elements of the connection necessary to link together different acts into one and the same transaction". This proposition, as it noted, was not intended to cover all cases and this is expressly mentioned. Then it goes on "In such cases the acts alleged to be connected with each other must have been done in pursuance of a particular end in view and as accessory thereto or perhaps as suggested by the circumstances in which the acts in pursuance of the original design were done and in close proximity of time to those acts. But mere community of purpose is not sufficient; there must also be continuity of action." It is laid down in *Emperor v. Sherufalli* 4 Bom.L.R. 930, which was accepted in *Choragudi Venkatadri v. Emperor* 5 Ind. Cas. 847 : (1910) M.W.N. 65 by this Court as enunciating the proper test: "The real and substantial test, then, for determining whether several offences are connected together so as to form the same transaction depends upon whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action." Here the acts relied upon by the prosecution were undoubtedly such as to constitute one continuous action. It was argued that the objects of the unlawful assembly at the three different places were different, and it is pointed out" that some of the accused persons took part in the occurrence at one place and some at another place. The fallacy running through the argument is that where there has been an occurrence of this nature, we must take the specific common object of each unlawful assembly mentioned in the charge as conclusive of the question whether, if there was more than one riot in the course of an occurrence, they could all be tried together. I do not think this is what was intended to be laid down either in *Choragudi Venkatadri v. Emperor* 5 Ind. Cas. 847 or *Emperor v. Sherufalli* 4 Bom. L.R. 930. Here the purpose which connects the occurrences in all the three villages was to prevent the Police by force from searching the Goundans' houses and to punish them if they dared to do so. Whether in pursuance of such a purpose some of the rioters had in view one specific unlawful object at one place and some other of the rioters pursued a different object at another place would make no difference, so long as the different assemblies participated in the one purpose of preventing Police Officers from searching Goundans' houses in connection with the theft of which they had information. It seems to us it could not have been the design of the Legislature that where there has been an occurrence of this nature arising out of a common cause, we should separate what happened into different compartments, as it were; and try the cases relating to different acts done in the course of the same

occurrence separately, The evidence of the whole occurrence must be. before the Court before it can come to a proper conclusion as to the nature of the offences committed by the different persons concerned in the occurrence, and that is another test to be applied in this connection.

5. We have considered the evidence carefully and there is no good reason to doubt that the case for the prosecution is true in all its substantial features. The Sub-Inspector of. Police went to the villages" to make investigation, and apart from the question of law as to whether he was entitled to conduct a search in those villages which are situated within the jurisdiction of an- other Police Station, there is no reason to doubt the bona fides of his action. The Goundans, however, did not want that any of their houses should be searched and took the law into their own hands. They not only obstructed the Police in conducting the search but beat them causing serious injuries. There can be no question of any right of private defence in a case of this character, as it could hardly be contended that the Sub Inspector of Police was not acting in good faith in trying to search the houses where the stolen "property was suspected to be concealed.

6. [Their Lordships discussed the evidence as against accused Nos. 1, 2, 3,4, 5, 6, 7, 8, 17, 21 and 23 and affirmed the conviction against all but accused Nos. land 21, who were acquitted.]

7. As regards the rest of the appellants, they have been convicted among other offences of an offence u/s 333 of the Indian Penal Code, that is, causing hurt to a public Servant in the lawful discharge of his duty. We have been asked to consider whether prosecution 1st witness was lawfully discharging his duty as a public servant in making" or attempting to make a search of houses at Molakalipalayam and Valayapalayam. We have no doubt that the view of the law taken on this point by the Sessions Judge is wrong. Both these villages, as already stated, lie outside the Police. Station of Annur, and the Sub? Inspector could not make any"" search in the villages of Molakalipalayam and Valayapalayam unless his action could be justified under sections 165, Clause 4, and 166 of. the Code of Criminal Procedure. u/s 166 an officer in charge of a Police Station may, he wishes, require an officer in charge of the station where the, place- Sought to be seasoned is situated to cause a search to be made in that place and with his help he himself can make the search. Section 165, sub Clause 4, on which the" learned Pleader appearing for the Public Prosecutor relies, says that the provisions of the Code as to search warrants shall apply, " as far as may be, to a Search made under this section. The argument in that the section, by "implication, authorises Police Officers to make searches in a place outside their, own jurisdiction in the same way as a Magistrate can issue a search warrant to search a place outside the limits of his jurisdiction. But sub Clause 4 of Section 165 requires that the search must" be made under the provisions of that very section and that section only provides for search within the limits of the Police Station of which the officer is in charge. This is a conclusive answer to the argument on behalf of the Crown. Further, we do not think that the Legislature

ever intended to confer on Police Officers in charge of a Police Station the power to make investigation outside the limits of their stations except in the mode provided by Section 166. Even where a Magistrate under Sections 96 to 99 issues a search warrant for a place which is not within the local limits of his jurisdiction, the law requires that the warrant should be endorsed by the Magistrate who has jurisdiction over it or, in emergent cases, by the officer in charge of the Police Station within whose limits the place is. What Sub-section 4 of Section 165 provides is that such of the provisions of the Code as lay down the mode in which a search is to be conducted, such as sections 102 and 103, should apply to searches by Police Officers; and it could not have been the intention of the Legislature that any Police Officer in charge of a Police Station loan, of his own will, search any place in the Presidency he chooses. We have not been referred to any sort of authority which would support the* proposition put forward on behalf of the Crown, nor has the learned Pleader appearing for the Public Prosecutor been able to refer to any rule in the Police Code which provides for a Police Officer searching houses in a place outside the limits of his own station. On the other hand, there is a ruling of the Allahabad High Court reported as "Madho Sonar v. Emperor 30 Ind. Cas. 141 : 13 A.L.J. 601, which seems to us to be exactly in point and in favour of the view of the law which we have suggested. We, therefore, think that the convictions of all the appellants u/s 333 of the Indian Penal Code must be set aside.

8. We also find that several of the appellants have been convicted, in addition to an offence u/s 147 of the Indian Penal Code of offences under Sections 323 and 325 read with Section 149, that is to say, they have been found constructively guilty of hurt, having been members of an unlawful assembly in course of which hurt was committed. Now, it has been well settled that where the object of an unlawful assembly is to cause hurt, then a member of that unlawful assembly, if he is convicted u/s 147, cannot be convicted also u/s 323 or 325 read with Section 149, except that such of the accused as have proved themselves to have caused hurt in the riot, - would be rightly \ convicted of the offence of hurt in addition to the offence of rioting. In the result the 2nd accused will be convicted only of an offence u/s 147 and his convictions under Sections 325 and 333 read with Section 149 will be set aside. The 3rd accused is rightly convicted under sections 147 and 323, but his convictions under other sections will be set aside. The 4th accused will be convicted only u/s 147, and his conviction under other sections will be reversed. The 5th, accused will be convicted under sections 147 and 323, but not under the other sections under which the Sessions Judge has convicted him. The 6th accused also will be convicted under sections 147 and 323, and his convictions under other sections will be set aside. The same applies to the 7th accused. We convict the 8th accused u/s "147 only and set aside his convictions under the other sections. The 17th accused has been rightly convicted under sections, 147 and 323, but his convictions under other sections will be reversed. The conviction of the 23rd accused u/s 147 will be upheld. His conviction under Sections 323 and 325 read with Section 149 will be reversed.

9. As regards the sentences, the offence was of a serious nature and the Sessions Judge has rightly awarded severe sentences. But as we have set aside convictions under some of the sections of which the Sessions Judge wrongly found the accused persons guilty, we reduce the sentences in- the case of accused Nos. 2, 4 and 23 to one year and nine months" rigorous imprisonment each and in the case of accused Nos. 3, 5, 6, 7 and 17 to two years and nine months" rigorous "imprisonment each. In the case of the 8th accused, having regard to his old age we think simple imprisonment for one and a half years will sufficiently meet the ends of justice.

10. Having had all the evidence before us, we feel bound to consider the case of the 20th accused who has been convicted u/s 224 of the Indian Penal Code, although he has preferred no appeal to us He was the person in whose house a cloth alleged to be stolen property was found at Molakalipalayam and he was arrested and kept in the custody of two Police constables while the Sub-Inspector went on to Yalayapalayam. After the riot at Valaya-palayam, when the Sub-Inspector took shelter in Muthugoundanputhur, some of the mob at Molakalipalayam rescued the 20th accused. The 20th accused went away with the mob as the two policemen who were in charge of him had to flee on being attacked by the mob. We think he was technically guilty of the offence u/s 224, that is, of escaping from lawful custody. Pat having regard to the facts of the case we cannot regard his act in a serious light as in the case of the other accused. He has already suffered imprisonment for more than three months, and that Will be sufficient punishment in his case. We reduce his sentence to the term already suffered and he will be discharged from custody.

11. The order regarding security bonds will be set aside in the case of accused Nos. I, 2.1 and 20 and will stand in the case of the other accused.

12. The bail bonds of accused Nos. 1 and 21 will be cancelled.