
(1938) 08 MAD CK 0054
In the Madras High Court

P. Rami Reddi and Others

APPELLANT

Vs

Chintha Chinna Narasi Reddi

RESPONDENT

Date of Decision : 08-08-1938

Acts Referred:

Citation : AIR 1938 Mad 924 : (1938) 48 LW 378 : (1938) 2 MLJ 583(1)

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The petitioners in this case have been convicted of affray and sentenced to pay fines. The convictions and sentences were confirmed on appeal by the Sub-Divisional Magistrate, Jammalamadugu.

2. The only question argued in this case is whether one of the ingredients of the offence of affray, namely, fighting by two or more persons, has been established; in other words, when members of one party beat members of another party and the latter did not retaliate or make any attempt to retaliate, could it be said there was fighting between the members of the one party and the members of the other. In this case, what happened was that the petitioners attacked and beat P.W. 2, because he had given evidence against them. When P.W. 1 demonstrated, he also was beaten and he fell down unconscious. P.W. 3 who interceded was hit with stones by two of the accused who have been acquitted. From this account of the offence given by the prosecution can it be said there was fighting by two or more persons, the other ingredients of the offence, namely, that the occurrence was in a public place and that it was likely to cause alarm to the public being established. In a connected case, Horwill, J., said that to constitute an affray, there must be a fight and it is not a fight when one side is aggressive and the other side is passive. It was on this ground that the petitioners in the connected case were acquitted in revision. I am of opinion that fighting connotes necessarily a contest or struggle for mastery between two or more persons against one another. A struggle or a contest necessarily implies that there are two sides each of which is trying to obtain the mastery, so that unless there is

some violence offered or threatened against one another, there could be no fight but only a mere assault or beating. In these circumstances, I am prepared to follow the view adopted by Horwill, J., in the connected case and find that there was no righting in the present case. It was merely a case of beating by members of one party of certain members of another party for which no doubt they could have been charged and punished, but as the prosecution deliberately chose to amend the charge, and rest their case entirely on the charge of affray, the case must stand or fall by what the prosecution has done. The offence of affray not having been established, the petitioners were entitled to be acquitted of that charge. Their convictions and sentences u/s 160 of the Indian Penal Code are therefore set aside and they are acquitted. The fines if paid by them should be refunded Petition allowed.