

Sayyapureddi Chinnayya Dhora and others - - - *Appellants*

v.

The King-Emperor - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 9TH DECEMBER, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD MOULTON.

LORD SUMNER.

SIR JOHN EDGE.

[*Delivered by* VISCOUNT CAVE.]

The appellants were convicted under Section 304 (1) of the Indian Penal Code of culpable homicide not amounting to murder, and were sentenced by the Sessions Judge of Vizagapatam to rigorous imprisonment for three years. On appeal to the High Court of Judicature at Madras, that Court affirmed the conviction and, on the application of the Public Prosecutor for revision of the sentences, enhanced the sentences to transportation for fourteen years. Leave to appeal to His Majesty in Council having been obtained, it was contended on behalf of the appellants that the High Court had no jurisdiction to impose a sentence of transportation for fourteen years.

Section 304 (1) of the Penal Code authorises a sentence of "transportation for life or imprisonment of either description for a term which may extend to ten years"; and Section 59, which applies to every case where an offender is punishable with imprisonment for a term of seven years or upwards, authorises the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a

term not less than seven years and not exceeding the term for which by the Code he is liable to imprisonment. These provisions have been considered in several cases in India, and it has been uniformly held that, while they authorise a sentence of transportation for life, they do not empower a Court to impose a sentence of transportation for a term of years exceeding the maximum term for which a sentence of imprisonment can be imposed, namely, ten years. Their Lordships agree with these decisions, and it remains for them to consider what advice they should tender to His Majesty in the present case.

Their Lordships were invited by Counsel for the Crown to apply the rule which has been repeatedly laid down by the Board, that " His Majesty will not be advised to review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done " (*re Dillet*, L.R. 12 App. Cas. 467); and to say that, as the offence in this case was grave, and the appellants might justly have been sentenced to transportation for life, the sentence of transportation for fourteen years, though irregular, should be allowed to stand. But it appears to their Lordships that as in this case the sentence is found not to be authorised by law they must hold that there has been substantial injustice, for the sentence may involve the incarceration of the appellants during many years without legal authority. Although the crime committed was no doubt of a very grave character, and it may be that the High Court, if the legal objection to a sentence of transportation for fourteen years had been brought to their notice, would have passed a life sentence, their Lordships cannot assume that this would have been done, and it is no part of their duty to consider whether a higher sentence than that actually passed should or might justly have been inflicted.

Their Lordships will humbly advise His Majesty that the case be remitted to the High Court of Judicature at Madras with instructions to pass a sentence according to law.

In the Privy Council.

SAYYAPUREDDI CHINNAYYA DHORA
AND OTHERS

v.

THE KING-EMPEROR.

DELIVERED BY VISCOUNT CAVE.

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