

CRIMINAL REVISION.*Before Sharfuddin and Teunon JJ.*

1914

DEPUTY LEGAL REMEMBRANCER

Aug. 19

v.

KAILASH CHANDRA GHOSE.*

Misjoinder—Wrongful confinement on one day, wrongful confinement and assault of the same persons on a subsequent day—Identity of transaction—Unity of object—Criminal Procedure Code (Act V of 1898) s. 232.

Where, in consequence of certain persons having killed a cow on a zamindar's estate contrary to practice and eaten its flesh, they were taken to the *cutcherry* on the 14th December, fined therefor and confined till they had furnished security for the payment of the fine within three days, and on their failure to do so were again taken to the *Cutcherry* and detained there, and on information given to the police, one of them was beaten and all ejected :—

Held, that the illegal confinement on the first day, and the similar confinement and assault on the second day were parts of the same transaction, the object of the accused on both days being the same, viz., to punish the persons for a breach of the rule by extorting the fine, and the assault on the second day being the conclusion of the transaction, and that the joint trial of the accused for offences under s. 347 of the Penal Code committed on the 14th and 18th and for that under s. 352 on the latter date by them was legal.

Emperor v. Datto Hanmant Shahapurkar (1), and *Emperor v. Sheruf-ally Allibhoy* (2) approved.

Budhai Sheik v. Emperor (3), and *Gul Mahomed Sircar v. Cheharu Mandal* (4) distinguished.

THE facts of the case were as follows. On the *Baker-Id* day in September 1913, one Abdul Sheikh

* Criminal Revision No. 1034 of 1914 against the order of Annoda Charan Sen, Sessions Judge of Pabna, dated 12th May 1914.

- (1) (1905) I. L. R. 30 Bom. 49. (3) (1905) I. L. R. 33 Calc. 292.
 (2) (1902) I. L. R. 27 Bom. 135. (4) (1905) 10 C. W. N. 53.

slaughtered a cow on the estate of Banamali Rai, a zamindar in the Serajganj district, in violation of a practice of the estate to the contrary, and three others, Mazam Ali Sheikh, Umed Ali Mandal, and Manik Sheikh, ate the flesh. The four men were taken to the *cutcherry* on the 14th December 1913 by some *peadas*, and the accused, Kailash Chandra Ghose, an inspector, and Ram Chandra Ghose, naib of the estate, fined them and kept them in the custody of the *peadas* in order to realize the fines. After they had paid Rs. 9 as *peadas*' fees and furnished security for the payment of the fines within three days, they were released. They, however, failed to pay the same on the due date, and were again taken to the *cutcherry* and confined. In the meantime information was given on their behalf to the police, and the fact coming to the knowledge of the accused, Kailash beat one of them under the orders of the naib, and ejected all of them from the premises.

The accused were placed on trial jointly before Babu Banamali Bagchi, Deputy Magistrate of Serajganj, and charged as follows :—

(i) That you, on the 14th December, at Deobhag *cutcherry*, wrongly confined Mazam Ali Sheikh, Abdul Sheikh, Umed Ali Mondal and Manick Ali, for the purpose of extorting money from them and thereby committed an offence under s. 347, I. P. C.

(ii) That you, on the 18th December, at the same place, wrongfully confined [the same persons] for the purpose of extorting money from them an offence under s. 347, I. P. C.

(iii) That you, on the 18th December, at the same place, assaulted Mazam Ali Sheikh, and thereby committed an offence under s. 352, I. P. C.

The Magistrate convicted both petitioners, on the 30th March, under s. 347 of the Penal Code on both counts, and also under s. 352, and passed sentences of fine and imprisonment.

On appeal, the Sessions Judge of Serajganj held that the offences committed on the 14th and 18th

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December were not parts of the same transaction, and that the joint trial was, therefore, bad in law. He set aside the conviction and ordered a re-trial.

The Deputy Legal Remembrancer, thereupon, moved the High Court and obtained the present Rule.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

Mr. J. N. Roy, Babu Harish Chandra Roy and Babu Jogendra Narain Mazumdar, for the accused.

SHARFUDDIN AND TEUNON JJ. This Rule was issued calling upon the District Magistrate of Pabna and the opposite party to show cause why the order of the Sessions Judge, dated the 12th May 1914, should not be set aside, and the appeal re-heard on the merits. It appears that the two accused, Kailash Chandra Ghosh and Ram Chandra Ghosh, were tried under Sections 347, 352 and 352 coupled with section 114 of the Indian Penal Code, convicted and sentenced. On appeal to the Sessions Judge an order was passed for a retrial on the ground of misjoinder. In order to understand how the question of misjoinder arose certain facts have to be stated. There is a gentleman named Rai Banamali Rai Bahadur who is a zemindar. There is a prevailing practice in his estate that no one is allowed to slaughter cows. It appears that on the *Bakr-id* day just before the occurrence some Mahomedans slaughtered a cow. This was considered to be a breach of the practice of the estate, and on the 14th December four men, *viz.*, Mazam Ali Sheikh, Abdul Sheikh, Umed Ali Sheikh and Manik Sheikh, were called to the *Cutcherry* by two *peadas* and the inspector, and naib fined Abdul Sheikh Rs. 200 and Mazam Ali, Umedali and Manik Sheikh Rs. 50 each on account of the slaughter of the

cow. It appears that on the 14th December only Rs. 9 was realised and the rest was promised to be paid three days later. On the 17th, the rest of the money was not paid, with the result that on the 18th these persons were again brought to the *cutcherry* and again confined. On coming to know that information had been sent to the police on behalf of the confined persons, they were beaten with shoes, and ejected from the place in which they had been wrongfully confined. The question is, whether the occurrence that took place on the 14th December and one that took place on the 18th December were two distinct transactions or form parts of one and the same transaction. It appears that the object was to punish certain Mahomedans of this estate for a breach of the rule of that estate in slaughtering a cow. It was with that object these four persons were brought to the *cutcherry*, fined and a portion of the fines realised. These men had promised to pay the balance of the fines three days later, but they failed to do so, and so on the 18th, it is said, wrongful confinement again took place. There can be no doubt, therefore, that what took place on the 18th was in continuation of what took place on the 14th. It has been contended that on the 18th, another offence was committed, namely, offences under Sections 352 and 352 read with Section 114 of the Indian Penal Code: therefore, this was a distinct offence and not in the same transaction, even supposing that the wrongful confinement on both days constituted one transaction. We think that the shoe-beating and other maltreatment of the Mahomedans when released from their wrongful confinement, were the concluding portions of the same transaction. They were all confined for one purpose, namely, for the purpose of extorting money, and on being informed that the police were coming,

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these men were shoe-beaten and turned out. The whole thing was really one transaction. The learned Sessions Judge was, however, of opinion that these were two distinct transactions. Therefore, he held that there was a misjoinder, and ordered a re-trial. The view that we have taken on the facts stated above is supported by the cases of *Emperor v. Datto Hanmant Shahapurkar* (1) and *Emperor v. Sherufalli Allibhoy* (2). Our attention has also been directed to two cases by Mr. Roy, the counsel for the accused, viz., the cases of *Budhai Sheik v. Emperor* (3) and *Gul Mahomed Sircar v. Cheharu Mandal* (4). The facts of the two last-mentioned cases are different from the facts of the present case.

We, therefore, make the present Rule absolute, set aside the order of the learned Sessions Judge, dated the 12th May 1914, and direct that the appeal be now heard on the merits.

Let this record be sent down at once.

F. H. M.

Rule absolute.

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