APPELLATE CRIMINAL.

Before C. C. Ghose and Duval JJ.

TORAP ALI

v.

EMPEROR.*

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Jan. 12.

Charge—Charge of rioting with the common object of abduction in order to marry the abducted woman to another against her will—Conviction of rioting with the common object of abduction accompanied with force and wrongful restraint—Legality of conviction—Minor offences involved in the charge of rioting—Criminal Procedure Code (Act V of 1898), s. 238.

Where the appellants were charged, under section 147 of the Penal Code, with the common object of abducting the complainant's wife with intent that she would be compelled, or knowing it likely that she would be compelled to marry some one else against her will; and they were also charged under section 366 of the Penal Code with the same object, and under s. 498, and the Judge directed the Jury that, if they found that she was abducted by dragging her by the hand or the hair, then such abduction would amount to offences under ss. 341 and 352 of the Penal Code, and the accused was convicted of rioting under section 147 and acquitted of the offences under sections 366 and 498.

Held, that there was no misdirection, and that the conviction under s. 147, with the common object of abduction under circumstances constituting the offences under ss. 341 and 352 of the Penal Code was legal, as the latter offences were minor offences, within s. 238 of the Criminal Procedure Code, involved in the charge of rioting as actually framed.

Held, further, that the appellants were not prejudiced or misled by the omission to state the minor offences expressly in the charge under s. 147.

* Criminal Appeal No. 585 of 1925, against the order of Probodh Chandra Basu, Additional Sessions Judge of Backergunge, dated July 8, 1925.

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On the 4th December 1924 the complainant, Chootoo Fakir, married Hatiman with her free consent but without the consent of her brothers, the appellants Echamuddi and Elimuddi. On the 27th December, when she was returning home in a boat with her husband, the two appellants with others attacked the boat and carried her off. The prosecution case was that the brothers intended to marry her to one Lehajuddi.

The appellants were committed to the Court of Session by Mr. D. K. Ghose, Deputy Magistrate of Perojpur, charged under sections 147 and 366 of the Penal Code. They were tried before the Additional Sessions Judge of Backergunge with a jury. A charge under section 498, was added at the trial. The charges and the material portion of the Judge's direction to the jury are set out in the judgment of the High Court.

Mr. Radhika Ranjan Guha, for the appellants The appellants were charged under section 147 with the common object of abducting Hatiman in order that she might be compelled to marry another against her will, and also under sections 366 and 498. They were acquitted of the latter offences. The common object, therefore, failed, and they were entitled to an acquittal. The Judge misdirected the jury in saying that they could be convicted of rioting by committing offences under sections 341 and 352 which were not charged : and they were prejudiced.

The Deputy Legal Remembrancer (Mr. Khundkar) for the Crown. The offences under sections 341 and 352 are minor to the offences under sections 366 and 498, and are involved in the charge under section 147. The conviction is, therefore, legal under section 238 of the Criminal Procedure Code. They were not prejudiced by the omission to charge them under

sections 341 and 352 as they knew very well the facts they had to meet.

GHOSE AND DUVAL JJ. The appellants before us are five in number. They were tried by the Additional Sessions Judge of Bakarganj with the aid of a jury and have been convicted under section 147 of the Indian Penal Code. The appellants 1 and 2 have been sentenced to suffer rigorous imprisonment for a period of six months, while the appellants 3 to 5 have been sentenced to suffer rigorous imprisonment for a period of one year.

The facts giving rise to the prosecution, shortly stated, are as follows:—On the 4th December, 1924, the complainant, Chootoo Fakir, married a widow named Hatiman as his third wife with her free consent. Hatiman had two brothers, namely, the appellants 4 and 5. Their consent was not taken to the marriage, the marriage being celebrated at the place of Hatiman's deceased husband, Elimaddi Mridha, and registered on the 4th December, 1924. Since the date of the marriage Chootoo and Hatiman lived as man and wife. On the 20th December 1924, the appellants 4 and 5 tried to take Hatiman away forcibly but failed in their attempt. Hatiman thereafter filed a petition against her brothers on the 23rd December, 1924, under section 107 of the Criminal Procedure Code. Meanwhile the appellants 4 and 5 went to the local zemindar and prayed for his help in the matter of taking away Hatiman from her husband. The zemindar called both parties before him, and on looking at a copy of the entry in the marriage register, and being satisfied therefrom that Hatiman had married Chootoo with her own free will, he informed the appellants 4 and 5 that he could not help them in any way.

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Some time thereafter Hatiman, her step-son, Sabed Ali, and her husband Chootoo were returning home in a small boat. The five appellants before us, along with various other persons, came up in boats and attacked the people in Chootoo Fakir's boat. Sabed Ali and Chootoo were beaten and thrown into the river, and the appellants with the help of others forcibly carried off Hatiman. It is suggested that their object was to marry her to a man called Lehajuddi. Chootoo lodged a complaint with the *panchayet* and with the local zemindar on the 27th December, 1924, and he filed a complaint before the Magistrate on the 2nd January, 1925. The appellants with some others were thereafter sent up for trial.

The charges against the accused were three in number and they were as follows :—

"That you, on or about the 27th December, 1924, "at Jalabari river, p.-s. Swarupkati, were members of "an unlawful assembly, and in prosecution of the com- "mon object of the assembly, viz., to abduct Chootoo "Fakir's wife, Hatiman Bibi, with intent that she will "be compelled, or knowing it to be likely that she will "be compelled, to marry somebody else against her "will, committed rioting, and thereby committed an "offence punishable under section 147 of the Indian "Penal Code." The second charge was one under section 366 of the Indian Penal Code, and it ran as follows :—"That you, on or about the 27th December, "1924, at Jalabari river, p.-s. Swarupkati, abducted "Hatiman Bibi, wife of Chootoo Fakir, with intent "that she may be compelled, or knowing it to be likely "that she will be compelled, to marry somebody else "against her will, and thereby committed an offence "punishable under section 366 of the Indian Penal Code". The last charge was one under section 498 of the Indian Penal Code and it was added in the Court

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of Session. It ran as follows :—"That you, on or about "the 27th December, 1924, at Jalabari river, p.-s. "Swarupkati, took away Hatiman Bibi from her hus- "band, Chootoo Fakir, whom you knew or had reason "to believe to be the wife of the complainant Chootoo "Fakir, with intent that the said Hatiman Bibi might "have illicit intercourse with some person and thereby "committed an offence punishable under section 498 "of the Indian Penal Code."

The Jury found the accused guilty of having committed an offence punishable under section 147 of the Indian Penal Code. They found that the appellants before us were not guilty under section 366 or under section 498 of the Indian Penal Code.

At the hearing of this appeal before us it has been contended on behalf of the appellants that, having regard to the fact that the Jury had found that the appellants were not guilty under sections 366 and 498 of the Indian Penal Code, it ought to have been held that there could be no conviction under section 147 of the Indian Penal Code, inasmuch as the common object specified in the charge under section 147 had failed, because it had been found by the Jury that the appellants before us were not guilty of the offences under sections 366 and 498 of the Indian Penal Code. It has also been contended before us that the learned Judge was guilty of misdirection in the following passage :— "If you hold that Hatiman Bibi was compelled by "force to go from her husband's boat, *i.e.*, abducted, her "brothers Echamuddi and Elimuddi dragging her by "the arms and her maternal cousin, Mabdool, dragging "her by her hair, then such abduction only (even in "the absence of an intent that she may be compelled "to marry any person against her will, even in the "absence of an intent that she may have illicit inter- "course with any person), then such abduction only

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"(to bring Hatiman Bibi away from the social environ-
"ment of her husband) would amount to offences under
"sections 341 and 352 of the Indian Penal Code." The contention of the learned vakil who appears on behalf of the appellants is that there was no charge under section 341 or section 352, and that, therefore, the learned Judge could not ask the Jury to convict them under section 147 of the Indian Penal Code by inviting them to consider whether in the state of the evidence on the record, an offence under section 341 or 352 had or had not been committed by the appellants. On behalf of the Crown it has been argued that the position here was this, that the charge of abduction under section 366 was composed of various particulars; the combination of some of such particulars constituted a minor offence, such minor offence being contained in the charge under section 147, and that, therefore, the conviction under section 147 was legal, inasmuch as the common object mentioned therein involved a minor charge which was included in the particulars of the charge under section 366 of the Indian Penal Code. Similarly it has been argued with reference to the charge under section 498 that the minor charge involved therein is to be found specified in the charge under section 147. Lastly it has been argued that before the conviction and sentence can be set aside, this Court will have to be satisfied that there has been such prejudice to the appellants, that by reason of the omission to state in so many words the said minor charges that the appellants were misled, and that there has been miscarriage of justice.

We are satisfied, on examination of the record and on perusal of the learned Judge's charge to the Jury, that the charge to the Jury cannot be attacked on the ground of misdirection on the facts of this particular case. The charge under section 341

is involved in the charge under section 366. So also is the charge under section 352 involved in the charge under section 366. Similarly with reference to section 498. That being so, having regard to the specific charge set out in section 147, we have got to satisfy ourselves that that charge with the common object specified therein was of such a misleading description, that the appellants were handicapped in their defence and they did not really know what case they had to meet. The facts of this case set out above constitute in our opinion a sufficient answer to a contention of this nature. Moreover, by the application of the principle laid down in section 238 of the Criminal Procedure Code, it may legitimately be held that the conviction such as has been had in this case is not illegal: in fact it is amply borne out by the evidence on the record. In this view of the matter we are of opinion that there has been no prejudice whatsoever caused to the appellants, and that the charge to the Jury cannot be attacked in the manner in which it has been sought to be attacked.

Lastly, on the question of sentences, taking all the circumstances into consideration, we are unable to say that the sentences are of such severity that it is incumbent on us to interfere with them.

The result, therefore, is that this appeal fails and must be dismissed.

E. H. M. *Appeal dismissed.*