

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

IN THE MATTER OF THE PETITION OF CHANDRA NATH SIRKAR AND
OTHERS.

1881
April 2.

THE EMPRESS v. CHANDRA NATH SIRKAR AND OTHERS.*

*Confession—Persons jointly charged—Statement by Prisoner in absence of
Co-prisoners—Evidence Act (I of 1872), s. 30.*

Several persons were charged together with offences under ss. 148, 302, 324, and 326 read with s. 149 of the Penal Code. The Sessions Judge, when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round, and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court.

Held, that the evidence so given was inadmissible.

THE facts of the case fully appear from the judgment.

Mr. Gasper and Baboo Grish Chunder Chowdhry for the appellants.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J.—This is a case of riot, which resulted in the death of one Gopeenath Manjhi, permanent injury to the right arm of Khaim Sheikh caused by gunshots, and minor injuries to others, also caused by gunshots and by cutting weapons.

The Sessions Judge, in concurrence with both the assessors, has convicted Chandra Nath Sirkar, Alum Poramanick, Nundo Manjhi, and Hukim Poramanick of riot under s. 148 of the Penal Code, but differing from the assessors, he has also convicted Chandra and Nundo Manjhi of culpable homicide not amounting to murder; and he has sentenced Chandra Nath Sirkar to transportation for life, Nundo Manjhi to transportation for ten years, and Alum Poramanick and Hukim Poramanick to rigorous imprisonment for three years.

Criminal Appeal, No. 756 of 1880, against the order of C. D. Winter, Esq., Officiating Sessions Judge of Pubna, dated the 25th October 1880.

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Concurring with one assessor, but differing from the other, the Sessions Judge has further convicted Malu Sheikh, Modhoue Sheikh, Mudhee Sheikh, and Kolimuddeen Pathan, of riot, but he has, differing from both assessors, also convicted the last named of culpable homicide not amounting to murder; and he has sentenced Kolimuddeen Pathan to transportation for life, and the other three persons to three years' rigorous imprisonment. Two other men were acquitted by the Sessions Judge.

Appeals have been preferred against all these sentences.

The appellants have been defended by Mr. Gasper both in the Sessions Court and before us, and we are surprised to find that, in a case of such public importance and of so serious a character, the Legal Remembrancer has not been instructed to appear on behalf of the prosecution.

It appears that disputes have been existing, for some time past, in the village of Tepri, between two parties claiming to receive rents from the ryots, the one party being certain Sanddials of Solop, Kali Sunder Sanddial and another, and the other party, one Debi Doss, the auction-purchaser of the rights and interests of Bykunt Sanddial, brother of the Sanddials of the first party. Before this occurrence, Debi Doss died, but his interest is represented by his son Jibun Ram.

The existence of these disputes, and the likelihood of their terminating in a serious riot, was well known to the local police, whose station is two and-a-half kos, or five miles, distant from Tepri; and so late as the morning of the riot, which forms the subject of the present trial, the head constable left the place on completion of an investigation into an offence which arose out of the disturbed state of the village. The evidence shows that both sides had then assembled forcibly to assert their respective claims, and foreign clubmen (*deshwalis*) had been enlisted to overawe the villagers, and, in the event of a disturbance, to give to their respective sides the benefit of their superior strength and skill.

Under his purchase in 1283 or 1876 of the rights and interests of Bykunt Sanddial, Debi Doss claimed the entire sixteen annas share of the rents of the village. The other Sanddials opposed him, alleging that the interest of Bykunt Sanddial was only a small fractional share not exceeding one anna. The villagers

generally had yielded to the claim of Debi Doss, but a certain number of men of the fisher-class, inhabiting the quarter called Manjhipara, refused to pay him the rent demanded of them, and were supported and encouraged in their resistance by the Sandiyals.

The zemindari catcherry of Debi Doss was held at the house of Nundo Manjhi, close to the Manjhi's quarter, and a fence had been set up, barring the passage into the homestead of Dusrut and Subul Manjhi, at the head of the path, which runs west and north of Nundo Manjhi's homestead. The object of this was apparently to protect the Manjhis against any sudden attack from the catcherry quarter. These facts must have been patent to the head constable, who was in Tepri on the morning of the riot, and it is impossible to believe that they were not also known to the superior police officers at the adjoining police station. It is matter, therefore, of extreme surprise that they did not take strict measures to prevent the breach of the peace that was evidently imminent, or at any rate to hinder the introduction of firearms and large bodies of "deshwalis" into the village. This negligence on their part has deprived this Court of independent testimony, and made it extremely difficult to ascertain from the garbled accounts of the partisans of either side what the real facts connected with the origin of this riot are, or to say which party took the initiative. We gather, however, from the evidence that, on the 10th July 1880 (Asar 27th, 1287), Chandra Nath Sirkar held open catcherry under a gab-tree close to the house of Nundo Manjhi, which had been set apart for a catcherry, and began collecting rent from the villagers on the part of Debi Doss.

An attempt was evidently made to collect the rent from the residents of the Manjhipara close by, and this was at once met by an attack in force by the Manjhis, aided by deshwalis of the Sandiyals, who were either stationed in the house of Gopal Manjhi or in the neighbouring house of Bhagirathi Thakur. The houses of Gopee Manjhi, Dusrut, and Subul, which were in one cluster, became the scene of the disturbance, and almost immediately a large body of men on both sides assembled there and began the fight. One or more guns were discharged at the Manjhis, resulting in the wounding of Gopeenath Manjhi,

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Khaim Sheikh, and Dhonai. Gopeenath died in hospital on the 13th from peritonitis caused by this injury, and Khaim has been permanently deprived of the use of his right arm. It would seem that they were standing in the lane near the bamboo fence. There is much discrepancy in the evidence regarding the number of shots fired and by whom they were fired, but it is clear from the nature of the injuries inflicted, and the shot-marks found on the spot, that there must have been more than one discharge of firearms. There was some attempt made on behalf of the prisoners to account for these gunshots by an accidental discharge in the struggle brought on by the Manjhis, but there is no reason for accepting this explanation. There can be no doubt that the guns were fired deliberately at the Manjhis to injure some of them, and to ensure success to Debi Doss's party. Some of the witnesses even declare that certain persons, one of whom was the prisoner Kolimuddeen, were ordered to fire to drive off the Manjhis; whichever party, therefore, made the first move, it is clear that the other was fully prepared to resist, and it is equally clear that the party of Debi Doss overcame the Manjhis and looted their houses after they ran away. There is no evidence to show that the prisoners acted in the exercise of their legal rights of self-defence, and therefore any one of them who is proved to have been present, engaged in this riot, is liable to be convicted of some offence connected therewith. The Sessions Judge has felt the difficulty of relying implicitly on the evidence of the Manjhi witnesses, who, no doubt, were actively engaged on their side; and he has adopted the extraordinary expedient of convicting the prisoners principally on what each has said regarding the other. However much the law (s. 30, Evidence Act) may allow him to take into consideration a confession made by one of the prisoners as affecting himself and also another prisoner, the course which Mr. Gasper states the Sessions Judge adopted in recording the statements of the prisoners, and which is not denied by the Sessions Judge in reply to our enquiry on this subject, would prevent us from giving full effect to that law. It would seem, that when the Sessions Judge was about to examine the prisoners, he required each to withdraw from the Court until

his turn for examination came round. In consequence of this procedure, the principal prisoner, Chandra Nath Sirkar, was examined in the absence of the other prisoners, who never had an opportunity of denying or even knowing what he had said, and yet that statement, made behind their backs, is made the chief ground for convicting them. It is an elementary rule that no one should be condemned in his absence, and yet the Sessions Judge has acted in a manner directly opposed to it. We, therefore, are obliged to place entirely out of consideration any statement made by any of the accused in the absence of another prisoner so far as it affects the latter. (His Lordship then proceeded to consider the evidence and dismissed the appeals.)

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

BABA CHOWDHRY AND OTHERS (PLAINTIFFS) v. ABEDOODDEEN MAHOMED AND OTHERS (DEFENDANTS).*

1881
Feb. 17.

Suit for Arrears of Rent—Beng. Act VI of 1862, s. 10—Irregular Proceedings of Collector under—Shareholder—Proprietor.

An applicant under s. 10 of Beng. Act VI of 1862 must be the proprietor of the estate, and not merely a shareholder in the proprietary body.

Mahomed Bahadur Mojoondar v. Rajah Raj Kishen Singh (1), Moolook Chand Mundul v. Modhoosoodun Baohusputty (2), Shoorender Mohun Roy v. Bhuggobut Churn Gungopadhya (3) followed.

Under the above section, the Collector is not entitled to assess the rents at what he considers to be fair and reasonable rates from the rents prevailing in the neighbouring properties, but is only authorised to ascertain for the landlord what the existing condition of his estate is, what are the measurements, what the names of his tenants, and what the rents they are paying.

Anunt Manjhes v. Joy Chunder Chowdhry (4) followed.

In a suit for rent by one co-sharer, the plaintiff claimed that the rent should be calculated at the rate fixed by the Collector, in a proceeding held

* Appeal from Appellate Decrees, Nos. 1189 to 1211 of 1879, against the decree of Baboo Bhugwan Chunder Chuckerbutty, Subordinate Judge of Rungpore, dated the 19th March 1879, reversing the decree of Baboo Blubun Mohun Ghose, Munsif of Bhatnari, dated the 26th August 1878.

(1) 15 W. R., 522.

(3) 18 W. R., 382.

(2) 16 W. R., 126.

(4) 12 W. R., 371.