

CRIMINAL MOTION.

Before Mr. Justice Pigot and Mr. Justice O'Kinealy.

KAMRUDDIN DAI AND OTHERS (PETITIONERS) *v.* SONATUN MANDAL
(OPPOSITE PARTY).^c

1885

April 14.

Criminal Procedure Code—Act X of 1882, ss. 367, 424, 426—Judgment, Contents of.

A Sessions Judge, after hearing an appeal, gave the following judgment: "It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through, and commented on at considerable length. The Court finds no ground for interference. The appeal is dismissed." *Held*, that this was not a sufficient compliance with ss. 367 and 424 of Act X of 1882, and that the case should be retried.

FOUR persons who were said to have been the dependents of one Kali Das Rai were accused by one Sonatun Mandal, with having on the 21st November 1884, in company with some 150 others, unlawfully entered into his house, and with having taken away certain articles therefrom. The reason for the outrage was said to have been the refusal of Sonatun Mandal to give a *habuliat* in favor of Kali Das Rai.

The accused were tried by the Deputy Magistrate of Narail, and were convicted of rioting under s. 147 of the Penal Code, and sentenced to two months' rigorous imprisonment. The prisoners appealed to the Sessions Judge of Jessore on the following grounds: That the evidence given by the prosecution was unreliable: (1), because nine witnesses were mentioned in the first information as having been eye-witnesses of the alleged occurrence and only one of these persons had been called to give evidence; (2), because the witnesses who were examined were all of them ryots or dependents of one Chunder Kant Rai with whom Kali Das Rai was at feud; and (3), because the alleged outrage was said to have been committed in sight of the bazaar, and at a time when people were going to the *hat* and not one single independent witness was produced by the prosecution; (4), because

^c Criminal Motion No. 107 of 1885, against the decision of J. McLaughlin, Esq., Sessions Judge of Jessore, dated the 18th March 1885, affirming the decision of Baboo Ananda Chunder Sen, Deputy Magistrate of Narail, dated the 13th February 1885.

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the complainant alleged that certain articles of property stolen from his house were found by the police in the house of the accused, and no attempt was made to substantiate this statement by producing the articles said to have been stolen; (5), because there was no evidence save that of the complainant to show that the accused had ever been asked to give a *kabuliat*; and it had been proved that the complainant was not a ryot of Kali Das Rai; and (6), because there had been great delay in giving information to the police of the alleged outrage. The Sessions Judge heard the appeal and gave the following judgment:—

“It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The deposition have been gone through and commented on at considerable length. The Court finds no ground for interference. The appeal is dismissed.”

The prisoners applied to the High Court under the revisional sections of the Code, contending that the Sessions Judge had given no decision, in accordance with ss. 367 and 424 of the Code, on any one of the grounds of appeal, and that for this reason the judgment should be set aside and the appeal re-heard.

Mr. *H. Bell* for the petitioners.

The Court granted to the petitioners a rule *nisi* calling upon Sonatun Mandal to show cause why the judgment of the Sessions Judge should not be set aside, and why he should not be directed to re-hear the appeal.

When granting this rule, the Court, having regard to the fact that the prisoners were on bail up to the decision of the Sessions Judge, and considering that no proper decision had yet been come to by him, released the prisoners on bail pending the hearing of the rule.

The rule came on for hearing, and no one appearing to show cause, Mr. *Bell* (with him Baboo *Jagut Chunder Bamerjee*) on behalf of the petitioners, applied that the rule should be made absolute.

The Court (PIGOT and O’KINEALY, JJ.) thereupon set aside the judgment of the Sessions Judge, ordered a re-hearing, and released the prisoners on bail pending such re-hearing.

Rule absolute.