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case would not give to the widow any higher rights than what she possessed under the Hindu law, and the Bombay decision lays down what the Hindu law is upon the point. It lays down that the widow's right to recover maintenance is subject to the right of the purchaser of a portion of the family estate for valid consideration.

Therefore, it is clear that under the Hindu law, the plaintiffs, appellants, have no right to follow this property in the hands of the purchaser. That being so, the notice of their right to recover maintenance from the family estate cannot affect the rights of defendant No. 2. Under the Hindu law the widow's rights are limited in the way stated above. The defendant No. 2 purchased this property in execution of a decree for maintenance. Under the Hindu law such a purchaser acquires a superior right to that of the widow to recover maintenance from the estate.

In this case also, therefore, upon the principle laid down in the Bombay decision cited above, the judgments of the lower Courts appear to be correct.

We, therefore, dismiss this appeal also with costs.

Appeals dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Norris.

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December 16.

BEHARI MAHTON, APPELLANT *v.* QUEEN EMPRESS, RESPONDENT.*

Charge—Accused entitled to know exact value of charge made against him—Criminal Procedure Code—Act X of 1882, *s.* 221.

An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him, and unless he has this knowledge he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate him for acts not committed by himself, but by others with whom he was in company.

Criminal Appeal No. 680 of 1884, against the order and sentence of T. D. Beighton, Esq., Sessions Judge of Patna, dated the 10th of July 1884.

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IN this case the accused Behari Mahton was committed to the Sessions Court at Patna charged as follows :—

(1.) "That he on or about the 14th day of January 1884, being a member of an unlawful assembly and using violence in pursuance of its common object, committed the offence of rioting and thereby committed an offence punishable under s. 147 of the Penal Code."

(2.) "That in pursuance of the common object of the unlawful assembly of which he was a member, certain other members of the assembly committed the offence of murder of Bhagut Goala, and that he was therefore under s. 149 of the Penal Code guilty of that offence."

The Sessions Judge added to the last charge the words "and thereby committed an offence punishable under ss. 302, 149 of the Indian Penal Code and within the cognizance of the Court of Sessions;" he also further added two other charges, *viz.*—

(3.) "That you Behari Mahton, on or about the 14th January 1884, at Kurhara, in pursuance of the common object of the unlawful assembly of which you were a member, such common object being to resist the theft of crops by violence, certain other members of the said assembly (names unknown) committed the offence of culpable homicide of Bhagut Goala, an offence which you knew likely to be committed in pursuance of the common object, and you are therefore under s. 149 of the Indian Penal Code guilty of the aforesaid offence, and thereby committed an offence punishable under ss. 304 and 149 of the Indian Penal Code and within the cognizance of this Court."

(4.) "That you Behari Mahton, on or about the 14th January 1884, at Kurhara, in pursuance of the common object of the unlawful assembly of which you were a member, such common object being to resist the theft of crops by violence, certain other members of the said assembly (names unknown) committed the offence of grievous hurt which you knew likely to be committed in pursuance of the common object, and you are therefore under s. 325 of the Indian Penal Code guilty of the aforesaid offence, and thereby committed an offence punishable under ss. 325 and 149 of the Indian Penal Code, within the cognizance of this Court."

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The Judge in charging the Jury omitted to direct the Jury to consider what, if any, was the common object of the assembly before the assault was committed; he further omitted to point out that if the assault was committed in the absence of the accused, they ought to be satisfied that it was committed in pursuance of a common object which would make the assembly unlawful within the meaning of s. 149 of the Penal Code.

The Jury acquitted Behari of the offences under the first and third charges, but found him guilty under the last (having returned no verdict under the second charge).

The prisoner was sentenced to 18 months' rigorous imprisonment.

The prisoner appealed to the High Court.

No one appeared at the hearing.

The judgment of the Court (MITTER and NORRIS, JJ.) after setting out the two first charges *in extenso*, ran as follows:—

We are of opinion that the two first charges are not sufficiently explicit, and that they should have contained such particulars of the manner in which the alleged offence was committed as would have been sufficient to give the accused notice of the matter with which he was charged.

The foundation of both charges lay in the fact that the accused was alleged to have been a member of an unlawful assembly. "An unlawful assembly" is defined by s. 141 of the Indian Penal Code, and the alleged common object of the assembly ought to have been set out in the charges. An accused person is entitled to know with certainty and accuracy the exact value of the charge brought against him. Unless he has this knowledge he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate an accused person for acts not committed by himself, but by others with whom he was in company.

The Sessions Judge appears to have recognised the insufficiency of these charges, for he framed the new charges (Nos. 3 and 4) [here followed *in extenso* charges 3 and 4 as set out above.]

The Jury unanimously acquitted the accused on the first charge and on the first amended charge (1 and 3). As far as we can gather from the record, which is almost illegible, and which we

have almost been constrained to return to be fair copied, they have returned no verdict on the second charge; nor does the Sessions Judge appear to have directed their attention to that charge in his summing up. We are however satisfied that even if the second charge had been properly framed, there was no evidence upon which the accused could have been convicted of murder. The Jury however convicted the accused on the second amended charge (charge No. 4).

We have now to consider whether, looking at the form of the charge and considering the Judge's summing up, the conviction can be supported, for we can only set it aside upon some error in law.

We are of opinion that the charge as framed discloses no offence.

The common object of the unlawful assembly as laid in the charge was "to resist the theft of crops by violence." There is no punctuation in the charge as set out in the record, but we imagine that what was meant to be charged as the common object was "the resisting, by violence, the theft of crops."

Now, it is clear that under s. 96 of the Indian Penal Code the accused was justified in using violence for the protection of his own crops or those of any other persons, provided that, in the exercise of such right, he did not inflict more harm than it was necessary to inflict for the purpose of such protection.

The charge, to have disclosed an offence, should have alleged the common object to have been "to unlawfully resist by violence the theft of crops" or, still better, "to defend certain immoveable property, to wit, growing crops against the offence of theft, and, in such defence, to inflict more harm than was necessary for the purpose of such defence."

The case for the prosecution was that unnecessary violence had been used by members of the assembly other than the accused, for which he became responsible by virtue of s. 149 of the Indian Penal Code; this should have been distinctly alleged. We have carefully perused the Judge's summing up, and it appears to us to be deficient in this respect, in that he has not directed the Jury to consider what, if any, was the common object of the

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assembly before the assault was committed; nor has he told them that if the assault was committed in the absence of the accused, they must be satisfied that it was committed in pursuance of a common object which would make the assembly "unlawful" within the meaning of s. 149 of the Indian Penal Code. We are, therefore, constrained to set aside the conviction. Under the circumstances we think no good result would follow from our directing a new trial, and we accordingly direct that the accused be discharged from custody.

Appeal allowed.