may be so that the jury may, if they deem fit to do so, return a verdict of guilty on a cognate or minor offence though they return a verdict of not guilty on the offences with which the accused has been actually charged. In this case the jury found that the first accused was guilty of causing grievous hurt and the Judge has given judgment convicting him of the same. And therefore an appeal will lie from such judgment only on a point of law, the appellant having been convicted in a trial by jury *Bhootnath Dey* and others(1), *Surja Kurmi* v. *Queen-Empress*(2). There being nothing contrary to law in the trial or in the conviction of the appellant for the reasons already given, the appeal in my opinion fails except in regard to the severity of the sentence. I agree with my learned colleague as to the reduction of sentence proposed by him.

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

REGULA BHEEMAPPA AND THREE OTHERS, PETITIONERS,

v.

EMPEROR, COUNTER-PETITIONER.*

1902. March 18.

Penal Code—Act XLV of 1860, ss. 97, 101, 104—Private defence—"Protect a right"—Unlawful assembly.

The villagers belonging to C walked in a religious procession, through a part of the village of K, carrying with them a vessel containing water which purported to be consecrated. The villagers of K, objecting, obstructed the procession, whereupon the members of it resisted the obstruction, and used some violence, causing grievous hurt to one of the obstructors and hurt to others of them. The members of the procession were charged with and convicted of being members of an unlawful assembly, possessing deadly weapons, and causing grievous hurt, and their convictions were upheld on appeal. On revision :

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(1) 4 C.L.R., 405. (2) I.L.R., 25 Calc., 555.

* Criminal Revision Petition No. 525 of 1901, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of S. Russell, Sessions Judge of Bellary, in Criminal Appeal No. 55 of 1901, confirming the finding and sentences passed on the petitioners by E. Seetharama Row Naidu, Sub-Divisional First-class Magistrate of Adoni, in Calendar Case No. 18 of 1901.

REGULA BHEEMAPPA v. EMPEROR.

Held, that the convictions were wrong. The accused were justified, in the circumstances, in exercising their right of private defence; and the harm inflicted was not more than appeared to have been necessary for the purpose of self-defence.

CHARGES of being members of an unlawful assembly, possessing deadly weapons, and causing grievous hurt. All the accused belonged to the village of Chintakunta, and went in procession to worship a goddess in the village of Kaminahal,—situated three miles distant. A disturbance occurred, and 106 persons were charged by the police. The case for the defence was that a procession went from a temple situated in Chintakunta to a sacred spot in the limits of Kaminahal, a pot of consecrated water being carried with the people. When the accused had performed their acts of devotion and were returning, they were attacked by the people of Kaminahal, and the pot of sacred water was broken. Violence was used in defending the pot. It was contended for the defence that, in these circumstances, no offence was committed. The Sub-Divisional Magistrate of Adoni discharged 78 of the accused as they had not been sufficiently identified. He convicted the others and sentenced them to rigorous imprisonment for terms varying from four months downwards, and to fines varying from Rs. 300 to Rs. 50.

The accused appealed to the Sessions Judge who confirmed the convictions and sentences.

The accused now preferred this criminal revision petition.

Mr. *John Adam* for petitioners.

The Public Prosecutor in support of the conviction.

JUDGMENT.—The conviction of the accused is based on the assumption that they were doing an illegal act so long as they were carrying, within the limits of the village of Kaminahal, the pot of water which was propitiated and taken from the pond in question. It is admitted that ordinarily anybody may take water in his pot from the tank, which is not alleged to be the private tank of the Kaminahal villagers. Their objection to the accused carrying the pot of water in question on the particular occasion of the worship of a deity within the precincts of the tank is altogether a sentimental one founded upon certain notions which the Courts cannot take notice of as affecting the right of the accused to take water from the tank in a pot and carry it over the high-way to their own adjacent village, nor can the Court take any notice of

the motives sentimental religious or otherwise which actuated the accused in taking water supposed to be consecrated or propitiated from a public tank and carrying it in a pot. They were therefore acting legally in carrying the water in a pot and the obstruction caused thereto on the high road by the villagers of Kaminahal was clearly unlawful. Their resistance amounted to wrongful restraint of the accused and at least to an attempt to commit mischief in respect of the pot of water which was the property of the accused. The accused therefore were justified under the circumstances in exercising their right of private defence of body and of property and resisting the villagers in the obstruction they offered to the carrying of the pot of water (*vide* section 97, first and secondly, and sections 101 and 104 of the Indian Penal Code). The harm inflicted by one or other of the accused on some of the prosecution witnesses was simple hurt and on one of them it was grievous hurt. I am unable to say from the evidence on record that within the meaning of section 99 any of the accused inflicted more harm than was necessary under the circumstances to inflict for the purpose of self-defence; nor does either of the lower Courts find that if they had the right of private defence the accused exceeded the limits of private defence.

The conviction of all the petitioners is set aside and it is directed that they be set at liberty and the fines, if paid or realized, be refunded.

Ordered accordingly.