

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Pigot.

BRAE v. THE QUEEN-EMPRESS,*

1883

September 22.

Rioting—Penal Code, s. 156—Manager of Indigo Factory.

In order to convict the manager of an indigo factory under s. 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed.

THIS was a prosecution under s. 155 of the Penal Code against the manager of an indigo factory, by which he was charged with not having used all lawful means to prevent a certain riot, which it was alleged had taken place between his servants on the one side and some other parties, tenants of an adjacent land-owner, on the other; the same having been committed for his benefit, and he having had reason to believe that it was likely to occur.

The case for the prosecution was, that for a considerable time a dispute had been going on between the factory people and certain ryots, concerning some lands, which the former had taken by force from the latter, and on which they had sown indigo; that suits had been brought in respect of these lands by the ryots; that decrees had been obtained; and that finally they had been put in possession of them two days before the alleged occurrence took place. That several of the servants of the factory were present when possession was given by the nazir of the Civil Court, and that there was indigo six inches high growing on the lands at this time. That on the morning of the 9th March, at about 7 A.M., Brae, the manager of the factory, had been seen riding in the direction of the lands in dispute, and that later in the morning he, together with some of his own men, had passed close to, and inspected the indigo growing on them. That at about 10-30 or 11 A.M., a large body of factory servants armed with *latties*, and

* Criminal Appeal No. 538 of 1883, against the order of Mr. W. G. Dears Sub-divisional Magistrate and Justice of the Peace of Jhenidah, dated the 28th August 1883.

one of them with a gun, went to the lauds where the decree-holders were commencing to plough up the indigo, that a riot occurred, and that one of the tenant's party was killed, having been shot by the jaj-ameen of the factory. That Brae was at his house two miles off when the riot occurred, and that he had taken no steps whatever to prevent it.

Mr. *Dunne* for the appellat. A manager can only be charged under s. 156 and not 155, and in order to make him liable, it must be shown that the acts committed were either directly or indirectly instigated by him, and were for the benefit of the owner or occupier of the land.

In this case there is nothing to show that a riot did actually take place, as no facts have been spoken to from which a common object can be inferred, except the death of the man who is said to have been shot. But it cannot be suggested that Brae instigated such a proceeding as this, nor can it be said to have been for the benefit of the owner or occupier. The prosecution have also failed to show that the manager had any reason to anticipate a riot, for the fact of possession having been given to the decree-holders would not of itself be sufficient to raise a presumption to that effect. Further there is nothing to show that Brae had any means at his command to prevent a riot of the kind alleged.

The Deputy Legal Remembrancer Offg. (Mr. White) for the Crown. These sections are intended to put a stop to riots committed or abetted by managers of indigo factories, and as regards the evidence to be given in prosecutions under them, nothing more than a *prima facie* case need be made out in the Magistrate's Court. The Legislature, when framing these sections, evidently contemplated that a trial of the original riot case should have taken place, and that the offenders had been punished by the Sessions Court, where the evidence would be of a minute and voluminous nature, and that after that case had been decided, a proceeding of this kind should be taken to bring the manager to book. There is abundant evidence to show that a riot was committed. We show that a man was killed, and by one of the factory servants who was provided with a gun. We show that Brae passed and inspected the lands in the morning with some of his men, that a little after a number of his people went out in a body, armed, and that they went to the

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decree-holders' land, and whatever the dispute was, a man was killed. The indigo on the land was of great value to Brae; the object that these men had in view was to prevent its being ploughed up, and if they had done so, it would have been a decided benefit to the owner. O'Kinealy's Penal Code, p. 54, and the case of *The Queen v. Hurnath Roy* (1) were referred to.

The following judgments were delivered by the Court (MITTER and PIGOT, JJ.):—

MITTER, J.—The appellant in this case has been convicted by the Sub-divisional Magistrate of Jhenidah under s. 155 of the Indian Penal Code. It is quite clear, and it is not disputed, that that is not the right section under which he should have been convicted. The appellant was simply the manager and not the owner of the land respecting which the alleged riot took place. The section under which he should have been charged is s. 156, but it appears to me that on three essential points the evidence that has been adduced is not sufficient to establish an offence under s. 156.

The first point that is necessary to be established is that a riot was committed, but there is no evidence to prove that a riot, as defined in the Penal Code, was committed. It is necessary to show that there was an assembly of more than five persons, who had a common object in view, but in this case there is no evidence to show that the servants of the factory, who are alleged to have constituted the unlawful assembly, had any such common object. It is said that their object was to prevent the indigo plants being uprooted, but no evidence of this has been adduced on behalf of the prosecution. Therefore, there is no legal evidence to establish that a riot was committed.

The second point upon which evidence for the prosecution is wanting is that it is not shown, supposing that a riot was committed, that it was committed for the benefit or on behalf of the person who was the owner or occupier of the land respecting which such riot took place. If the common object was to prevent the indigo plants being uprooted, then in that case no doubt it could have been reasonably inferred that the riot was

(1) 3 W. R. Cr. 54.

committed for the benefit or on behalf of the owner of the land, but that being not established, it follows that it is not shown that the riot, if it was committed, was committed for the benefit or on behalf of the owner or occupier of the land.

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The third point is that it is not shown that the appellant before us had reason to believe that any riot was likely to be committed. No doubt this fact can very seldom be established by direct evidence, but there must be circumstances from which it may be reasonably inferred. In this case the only circumstances that have been established are, that Mr. Brae was in the factory at the time that the alleged riot took place, and that amongst the rioters were some servants of the factory, but these facts are not sufficient to give rise to the inference that before the riot took place—if any riot at all took place—the appellant had reason to believe that it was likely to take place.

Upon all these three points it seems to me that the evidence is not sufficient. Therefore the conviction and sentence will be set aside, and the fine if realized will be refunded.

PIGOT, J.—I entirely agree. I would only add that in applying the sections which give the Magistracy powers of such startling magnitude, it is in my opinion incumbent upon those entrusted with the exercise of such powers to act not upon inferences or suspicions but upon evidence. Whatever may have been the object of the Legislature, whether as explained by the learned Counsel for the prosecution or not, whatever may have been the occasion of the insertion in the Code of these most formidable sections, we must hold that the law thereby enacted is not intended to be applied upon surmise but upon proof.

Conviction set aside.