

## CRIMINAL REVISION.

*Before Mr. Justice Mitter and Mr. Justice Beverley.*

IN THE MATTER OF CHANDRA KANT BHATTACHARJEE AND OTHERS.  
CHANDRA KANT BHATTACHARJEE v. THE QUEEN EMPRESS.\*

1885  
December 11.

*Sentence—Cumulative sentences—Separate Convictions for more than one offence where acts combined form one offence—Penal Code (Act XLV of 1860), ss. 143, 147, 324, 353, (Act VIII of 1882), s. 4—Criminal Procedure Code, Act X of 1882, s. 235.*

Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, *A* and *B*, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on *A*. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months rigorous imprisonment under the former section and two months rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324, in respect of the assault on *A* and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other.

*Held*, that the offence of rioting was completed by the assault on *A*, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure.

*Held*, further, that even if *A* had not been assaulted the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused taken separately constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-section 3 of the Code of Criminal Procedure, the accused might be charged with and tried at one trial for the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII of 1882, which limit had not been exceeded in the present case.

\* Criminal Revision No. 421 of 1885, against the order of H. Beveridge, Esq., Sessions Judge of Fureedpore, dated September 14th, 1885, affirming the order of Baboo Rajoninath Chatterjee, Deputy Magistrate of Madaripore, dated August 31st, 1885.

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THE facts of the case were as follows: One Ramdoyal Dey, a Civil Court peon, accompanied by Abbas Mirdha, Lal Mahmood and others, went to the house of Kashi Chandra Bhattacharjee, a judgment-debtor, for the purpose of arresting him under a warrant which he held. It was alleged that, after Kashi Chandra was arrested, the accused, Chandra Kant Bhattacharjee, Soshi Bhattacharjee, Kali Prosonno Mookerjee and Mohini Bashi Mondol and others who were armed with *lathies* and a *dao*, came and rescued Kashi Chandra from the custody of the peon, and that in effecting his release they assaulted the peon, and that upon Abbas Mirdha and Lal Mahmood, who had accompanied the peon to identify the judgment-debtor, attempting to prevent the accused releasing Kashi Chandra, Abbas Mirdha was assaulted and wounded and Lal Mahmood was also struck.

The defence set up on behalf of the accused was that Chandra Kant and not Kashi Chandra was arrested, and that upon his getting away from the peon and entering his house the peon and a number of others followed him and assaulted him and dragged him out in spite of his resisting the illegal arrest, and that it was not till after the peon and the others with him had discovered their mistake that he was released.

The Deputy Magistrate disbelieved the evidence for the defence and found that the accused formed members of an unlawful assembly, with the common object of resisting the execution of a legal process, namely, the arrest of Kashi Chandra, and that force or violence was used by the unlawful assembly in prosecution of the common object. He also found that the accused resisted the peon in the execution of his duty to arrest the judgment-debtor. Upon these findings he convicted all the accused under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under s. 147 and two months under s. 353. He also convicted Soshi Bhattacharjee of an offence under s. 324 of the Penal Code, in respect of the hurt caused to Abbas, and passed a sentence of one month's rigorous imprisonment upon him in respect of that charge.

The Deputy Magistrate further directed that the sentences were to take effect one on the expiry of the other.

The accused then appealed to the Sessions Judge against the conviction and sentences. But the Judge confirmed the findings of the lower Court, and considering the sentences passed not too severe dismissed the appeals. The accused then applied to the High Court under its revisional powers to send for the record upon the ground that the conviction and sentences under s. 353 as well under s. 147 of the Penal Code could not be sustained.

The case now came on to be argued.

Baboo *Umbicai Churn Bose*, for the petitioners.

No one appeared for the opposite party.

The judgment of the High Court (MITTER and BEVERLEY, JJ.) was as follows:—

In this case the record was sent for in order to ascertain whether the conviction and sentence under s. 353, as well as that under s. 147 of the Indian Penal Code, can be sustained.

It is contended before us that, inasmuch as by its definition in s. 146 of the Indian Penal Code the offence of rioting involves the use of force or violence, the accused cannot be separately convicted and sentenced for the use of the same force under s. 353.

The facts, as found by both the lower Courts, are that one Ramdoyal Dey, a Civil Court peon, accompanied by Abbas Mirdha and Lal Mahmood, went to arrest one Kashi Chandra Bhattacharjee; that the process was resisted by the accused, and that both the peon and Abbas Mirdha were assaulted in the struggle that ensued.

The four accused were convicted under ss. 147 and 353 of the Indian Penal Code, and sentenced to a separate punishment under each section. Soshi Bhusan Bhattacharjee has also been convicted and sentenced under s. 324 of the Indian Penal Code, for the assault committed on Abbas.

It having been found by the lower Courts that force was used both to the peon and also to Abbas, it seems clear that the force used to either by any member of the unlawful assembly would suffice to constitute the offence of rioting. It follows that the

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offence of rioting was completed by the assault on Abbas, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure.

But the matter has been argued before us on the assumption that it was the force used towards the peon that constituted or completed the offence of rioting, and that the accused cannot fairly be convicted and sentenced under another section for the use of the same force.

We think that this view of the law is wrong, and that even if Abbas had not been assaulted, the conviction and sentences passed for the assault on the peon were legal and must be upheld. Sub-section 3 of the section in question (235 of the Code of Criminal Procedure) runs as follows: "If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts."

In the present case we have acts separately constituting offences under ss. 143 and 353 of the Indian Penal Code, and when combined constituting an offence under s. 147 of the Indian Penal Code. Under the sub-section quoted, therefore, the accused might be charged with and tried at one trial for the offence under s. 147, for that under s. 143, or for that under s. 353. It follows that they might also be separately convicted and sentenced for each offence.

Section 235, however, goes on to say that "nothing in this section shall affect the Indian Penal Code, s. 71;" and turning to that section as amended by Act VIII of 1882, we find it laid down that in cases (such as that before us) falling under sub-section (3) of s. 235 of the Code of Criminal Procedure, "the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Now the aggregate punishment actually awarded under ss. 147 and 353 of the Indian Penal Code is eight months imprisonment only, whereas the Deputy Magistrate might have awarded two years imprisonment under s. 147 alone.

There is, therefore, nothing illegal in the sentences passed.

H. T. H.

*Conviction and sentences upheld.*