

## REVISIONAL CRIMINAL.

1901  
August 15.*Before Mr. Justice Banerji.*KING-EMPEROR *v.* KALIJI *alias* KALI SINGH AND OTHERS.\**Act No. XLV of 1860 (Indian Penal Code), section 147—Riot—Private defence of property—Act No. XLV of 1860 (Indian Penal Code), sections 96 et seq—Deliberate aggression by party entitled to possession.*

Party *A* sowed a crop in a field to the possession of which apparently they were entitled. Party *B* claiming the field and the crop as theirs, entered upon the land and began to cut the crop. Party *A*, having watched party *B* enter upon the land took counsel together and then proceeded to attack party *B*, and a fight ensued in which grievous hurt was caused. *Held* that it was not open to party *A* to plead that they were acting in the exercise of their right of private defence of property. *Queen-Empress v. Prag Dat* (1) followed. *Queen-Empress v. Narsang Pathabhai* (2) distinguished. *Pachkauri v. Queen-Empress* (3) not followed.

THE applicants in this case were convicted by a Magistrate of the first class of rioting and causing grievous hurt and sentenced to six months' rigorous imprisonment each, and the convictions and sentences were affirmed on appeal by the Sessions Judge. The cause of the riot was a piece of land, formerly occupied by a grove, but which at the time of the dispute had been cleared and planted with sugarcane. The owner of the land was one Bhuneshar Singh, who was a minor under the guardianship of two ladies, Musammat Rekha and Musammat Ram Piari. The applicants were servants of the ladies, and the opposite parties in the riot were certain persons who claimed to be cultivators of the land on behalf of the zamindars. On the 27th of January, 1901, the party of Ram Ghulam Singh came to the land and began to cut the sugarcane. The applicants, who seem to have made up their minds to take this opportunity of attacking their opponents, watched Ram Ghulam Singh's party commence to cut the cane, and then retired to a neighbouring karkhana, whence, after holding a consultation, they issued and attacked the persons who were engaged in cutting the cane. A riot ensued in the course of which one man was injured severely and another less seriously. Before the trying Magistrate the plea of

\* Criminal Revision No. 475 of 1901.

(1) (1898) I. L. R., 24 All., 459. (2) (1890) I. L. R., 14 Bom., 441.  
(3) (1897) I. L. R., 24 Cal., 686.

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self-defence was raised on behalf of the present applicants, but without success, the Magistrate finding that the applicants' party had resolved beforehand to make an assault under the pretence of cutting the sugarcane, that they had gathered together at a *kar-khana* under the leadership of Kali Singh, and that after holding a consultation they proceeded to the spot, where Ram Ghulam Singh's party were cutting the crops, and there a fight took place. The applicants having appealed to the Sessions Judge and their appeal having been dismissed, applied to the High Court in revision, again urging that in acting as they had they were acting in the exercise of their right of private defence.

Mr. *Amir-ud-din*, for the applicants.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

BANERJI, J.—The applicants have been convicted under sections 147 and 325, I. P. C. It appears that a plot of land No. 266 had a grove on it which belonged to one Bhuneshar Singh, a minor, under the guardianship of two ladies, Musammat Rekha and Musammat Ram Piari. It has been found that the land was sown with sugarcane on behalf of the ladies in the year 1308F., that Ram Ghulam Singh and others claimed to be the cultivators of that land on behalf of the zamindars, and that consequently a dispute arose between the party of the ladies and the party of Ram Ghulam Singh. The applicants are the servants of the ladies. On the 27th of January, 1901, the party of Ram Ghulam Singh came to the land and began cutting the sugarcane crop. The applicants, who were headed by Kali Singh, resisted Ram Ghulam Singh's party, and a lathi fight took place, in which two persons sustained grievous hurt. The applicants have been convicted of the offence of rioting in consequence of the part taken by them in the fight. It is urged on their behalf that they were exercising their right of private defence, and that consequently they were not guilty of any offence. On the finding of the Magistrate, which has been approved of and affirmed by the Sessions Judge, and having regard to the rulings of this Court, this contention must fail. The Magistrate has found that the applicants' party had resolved beforehand to make an assault under the pretence of cutting the

sugarcane, that they had gathered together at a karkhana under the leadership of Kali Singh, and that after holding a consultation they proceeded to the spot where Ram Ghulam Singh's party was cutting the crops, and there a fight took place. It was held in *Queen-Empress v. Prag Dat* (1), that "when a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage with men who, on the other hand, are equally determined to vindicate by unlawful force their rights, or supposed rights, no question of self-defence arises." That ruling fully applies to this case, and having regard to it the plea of self-defence cannot be sustained. The learned counsel for the applicants referred to the ruling of the Bombay High Court in *Queen-Empress v. Narsang Pathabhai* (2). That case is, in my opinion, distinguishable, as it was decided with reference to its own peculiar circumstances, which were different from those of the present case. The ruling of the Calcutta High Court in *Pachkauri v. Queen-Empress* (3), upon which the learned counsel relies, no doubt supports his contention. There it was held that where a body of men who were rightfully in possession found it necessary to protect themselves from aggression on the part of the complainant's party, they were justified in taking such precautions as they thought were required and in so doing they could not be held to be members of an unlawful assembly. The view taken in that case is not in accord with that adopted in the ruling of this Court to which I have referred above, and I think I should follow the latter ruling. As the plea of self-defence fails the application must be dismissed. I see no reason to interfere with the sentence.

(1) (1898) I. L. R., 20 All., 459. (2) (1890) I. L. R., 14 Bom., 441.

(3) (1897) I. L. R., 24 Calc., 686.

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