Before Mr. Justice Trevelyan and Mr. Justice Beverley.

IN THE MATTER OF THE PETITION OF MOHUR MIR AND OTHERS *v.* THE QUEEN-EMPRESS, 1889 *June* 12.

and

IN THE MATTER OF THE PETITION OF KALI ROY AND OTHERS *v.* THE QUEEN-EMPRESS. *

Sentence—Cumulative Sentences—Rioting—Distinct offences—Conviction for rioting and causing hurt and grievous hurt—Separate Conviction for more than one offence when acts combined form one offence—Abetment of grievous hurt during riot—Penal Code (Act XLV of 1860), ss. 147, 323, 325).

Six accused persons were charged with and convicted of rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code.

Held, that the sentences were legal.

During the course of a riot, in which *X* was attacked and beaten by several of the rioters, one of them *K* inflicted grievous hurt on *X* by breaking his rib with a blow struck with a *lathi*; *K* and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code and *K* was convicted under those sections. The other three were convicted under s. 147 and also under s. 325 read with s. 109. Separate sentences were passed on *K* and also on the other three for each of the offences.

Held, that the sentences on *K* were legal, but that as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had each of them assaulted *X*, the conviction of them under s. 325 read with s. 109 could not be supported.

THE accused in the two cases which gave rise to these two rules were peons employed by a large zemindar named Mohunt Gopal Das, and the complainants in both cases were ryots of his, residing in a village called Damra. It was alleged that for a considerable time the zemindar had been trying, though unsuccessfully, to enhance the rents of his ryots, and this had led to numerous cases between him and the ryots. It was alleged that having failed to attain his object in the Civil Courts, he endea-

* Criminal Motions Nos. 202 and 203 of 1889, against the orders passed by J. Whitmore, Esq., Sessions Judge of Birbhoom, dated the 21st April 1889, modifying the orders passed by W. B. Brown, Esq., Sub-Divisional Magistrate of Rampore Haut, dated the 1st of April 1889.

1889

IN THE MATTER OF THE PETITION OF MOHUR MIR v. THE QUEEN-EMPRESS.

voured to break down the resistance by a system of petty persecutions, and that he kept a number of peons, amongst them the accused, for the purpose of watching the jungle and waste-lands of his villages, impounding the cattle of the ryots, and charging the ryots with theft when grass or bamboos were taken from the jungle. The occurrences which formed the subject-matter of these two cases were alleged to have taken place in carrying out the object of the Mohunt, and they took place on the same day. Some of the accused were charged in both cases.

In Rule No. 202, the following persons were charged: (1) Mohur Mir, (2) Kali Rai, (3) Tenu Sheikh, (4) Umed Sheikh, (5) Murad Sheikh, and (6) Makhan Singh or Rai.

In that case, it was alleged that the accused had been deputed to bring two ryots, named Prankristo and Lal Behary, to the zemindary cutcherry. The story told by the witnesses for the prosecution was shortly to the effect, that Prankristo, Lal Behary, and a woman named Khiroda were returning home from Futtehpore Hat to Damra in a cart, along with some others, when they were stopped by the accused and other peons of the zemindar, and after a conversation they were assaulted and beaten in a savage manner. Both Prankristo and Lal Behary were stripped of their clothes and beaten with *lathies*, and Rs. 21, which were tied up in Prankristo's *dhoti*, were taken away. On Khiroda calling for help, some of the peons attacked her and pulled off her ornaments, which they took away. After the assault the three persons named were left lying wounded on the spot of the occurrence. The defence consisted of *alibis* and was also based on the fact that no persons were named in the first information.

The Sub-Divisional Magistrate convicted all the accused of rioting, coming to the conclusion that the common object was the causing of hurt to Prankristo and Lal Behary. He further found that there was nothing to show that robbery was contemplated by the assembly, or that there was any idea of assaulting Khiroda till she raised an alarm. He convicted and sentenced the various accused as follows:—

Mohur Mir under s. 147, two years' rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323 for causing hurt to Prankristo, six months' rigorous imprisonment,

Kali Rai under s. 147, one year's rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323 for causing hurt to Prankristo, one year's rigorous imprisonment.

Tenu Sheikh under s. 147, one year's rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323 for causing hurt to Prankristo, six months, and under s. 392 to an additional six months.

Umed Sheikh and Murad Sheikh under s. 147, to one year's rigorous imprisonment and a fine of Rs. 200, or six months.

Makhan Singh or Rai under s. 147, to one year's rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323, for causing hurt to Khiroda, six months, and under s. 392, to an additional six months.

All the accused were further ordered to be bound over to keep the peace for three years.

The accused all appealed to the Sessions Judge who set aside the conviction of, and sentences passed against, Kali Rai, Tenu Sheikh, and Makhan Singh, under s. 392, but upheld all the other convictions and the sentences passed thereon, with the exception of reducing the fines inflicted on all the prisoners save Kali Rai from Rs. 200 to Rs. 30, and in the case of Kali Rai, and three others, he reduced the fine from Rs. 200 to Rs. 50.

In Rule No. 203, the persons charged were—

(1) Makhan Singh, (2) Tenu Sheikh, (3) Murad Sheikh, and (4) Kali Rai.

In that case the prosecution alleged that one Kuree Ram was going alone from upper to lower Damra, when some 12 or 14 peons came up to him and asked him to go to the cutcherry. On his refusal to go, on the ground that it was too late, he was immediately attacked. He was mauled and knocked down by Mohur Mir and beaten with *lathies* by Tenu Sheikh and Kali Rai, the latter of whom hit him a blow on the side which fractured one of his ribs. Then all the peons fell on him and gave him a miscellaneous beating, and stripped him of his clothes and left him. The defence in this case was practically the same as in the other. The Sub-Divisional Magistrate convicted all the accused under s. 147 and sentenced them each respectively to six months' rigorous imprisonment and a fine of Rs. 200, or six

1889

IN THE MATTER OF THE PETITION OF MOHUR MIR v. THE QUEEN-EMPRESS.

months. He convicted Kali Rai of causing grievous hurt under s. 325 and sentenced him to one year's rigorous imprisonment and he convicted the other three under ss. 325 and 109 of abetting the causing of greivous hurt by Kali Rai, and sentenced them to three months' rigorous imprisonment; and he further ordered all the accused to be bound over to keep the peace for three years.

On appeal, the above convictions and sentences were upheld by the Sessions Judge, except that the fines in all cases were reduced from Rs. 200 to Rs. 30.

In both cases, an application was made to the High Court under its revisional powers to send for the records and set aside the convictions and sentences upon numerous grounds, and amongst them upon the ground that separate punishments for component parts of the same offence ought not to have been inflicted, and that the sentences were illegal.

Two rules were issued which now came on to be arued.

Mr. *Woodroffe* and Baboo *Rajendro Nath Bose* for the petitioners in both cases.

Mr. *Kilby* for the Crown.

The only question argued at the hearing of the rules material for the purpose of this report, was that relating to the legality of the sentences.

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

We have heard these two rules together.

In the first of them (Rule 202), six prisoners have been convicted and sentenced by the Magistrate. On appeal to the Sessions Judge, the sentences were in some respects modified. As they stand at present, four of the accused have been convicted of, and sentenced for, offences falling under ss. 147 and 323 Indian Penal Code, and the only question which we have to consider is whether these sentences were legal.

Mr. Woodroffe contended that separate sentences under those sections could not be imposed, relying upon a decision of a Full Bench of this Court, given in the appeal of *Nilmoni Poddar* v. *Queen-Empress* (1). That decision has, we think, no

(1) I. L. R., 16 Calc., 442.

application to the facts of the present case. The decision in question dealt with the liability of one rioter for offences actually committed by another rioter. It in no way affects the question of the liability of a rioter for the acts committed by himself. The Judges who referred that case to the Full Bench did not refer the appeals of the persons who actually committed acts of grievous hurt, but dismissed the appeals of those persons. In the Full Bench Case, Tottenham, J., says : "The actual perpetrator is unquestionably punishable both for rioting and for any further offence he commits," and for this proposition of law there is ample authority—see *Queen-Empress* v. *Ram Sarup* (1).

In the present case the accused have been separately convicted and punished for acts committed by themselves in the course of the riot. Kali Roy is convicted of having voluntarily caused hurt to Prankristo by hitting him with a *lathi*. Makhan Roy is convicted of having caused hurt to Khiroda by hitting her with a *lathi*. Tenu Sheikh, of having caused hurt to Prankristo, by hitting him with a stick, and Mohur Mir, of having caused hurt to Prankristo, by hitting him with a shoe.

We are of opinion, therefore, that the sentences passed upon those persons are legal.

Mr. Woodroffe further drew our attention to a passage in the judgment in *Lokenath Sarkar* v. *Queen-Empress* (2) which runs as follows : "If it had been found that the causing of hurt was the force or violence which alone constituted the rioting in the present case, then we should be prepared to hold that the prisoners could not be punished both for causing hurt and for rioting ; but the facts of the case do not warrant such a finding, for rioting was being committed before the hurts were inflicted, and the two men wounded." Without assenting to the proposition of law, as thus laid down, we would remark that in this case also the evidence shows that the offence of rioting was committed before Prankristo and his companions were actually struck. The accused, who appear to be zemindary peons, were deputed to bring Prankristo and Lal Behary to the zemindary

(1) I. L. R., 7 All., 757. (2) I. L. R., 11 Calc., 349.

1889

IN THE MATTER OF THE PETITION OF MOHUR MIR v. THE QUEEN-EMPRESS.

cutcherry; and they appear to have used considerable violence to them in attempting to do so before they struck them.

In the second case (Rule 203), Kali Rai has been convicted and sentenced both for rioting under s. 147 and under s. 325 for voluntarily causing grievous hurt to Kuree Ram by breaking one of his ribs; and the other three accused have been convicted and sentenced under ss. 147 and 325 read with s. 109, that is to say, for abetting the causing of grievous hurt to Kuree Ram by Kali Rai. We do not think that the conviction under this latter section was right, inasmuch as although the evidence shows that they themselves beat Kuree Ram, there is nothing to show that they abetted Kali Roy in inflicting the particular blow which broke his rib. We think, therefore, that these three accused should have been acquitted on that head of the charge, and we accordingly set aside that portion of the conviction and the sentence of three months' rigorous imprisonment imposed in respect of it.

In other respects we discharge the two Rules.

Rule 202 discharged.

H. T. H. *Rule 203 made absolute in part.*

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

1889 June 24.

IN THE MATTER OF THE PETITION OF KHEPU NATH SIKDAR AND OTHERS (PETITIONERS) *v.* GRISH CHUNDER MUKERJI (OPPOSITE PARTY).*

Criminal Procedure Code (Act X of 1882), ss. 195, 439, 476—Sanction for prosecution—Order for prosecution—Jurisdiction of High Court in revision to quash orders under s. 476 of the Criminal Procedure Code.

The High Court is competent in the exercise of its revisional powers to interfere with an order of a Subordinate Court, whether made under s. 195 or under s. 476 of the Criminal Procedure Code, directing the prosecution of any person for offences referred to in those sections. The High Court, under s. 439, has the powers conferred on a Court of appeal by s. 423 to alter or reverse any such order.

Before a Court is justified in making an order under s. 476, directing the prosecution of any person, it ought to have before it direct evidence,

* Criminal Motions Nos. 241, 242, and 243 of 1889, against the orders passed by Baboo Mohim Chunder Ghose, Deputy Magistrate of Nattore, dated the 7th of May 1889.