

REVISIONAL CRIMINAL.

1911
June 14.

Before Mr. Justice Sir George Knox.

EMPEROR v. MANIK RAI AND OTHERS.*

Criminal Procedure Code, section 106—Security to keep the peace—“Offence involving a breach of the peace”—Mischief by removing land-mark—Act No. XLV of 1860 (Indian Penal Code), section 434.

Held that an offence “involving a breach of the peace” mentioned in section 106 of the Code of Criminal Procedure, does not mean only an offence which necessarily involves a breach of the peace or of which a breach of the peace forms an ingredient, but includes such an offence as in common knowledge is ordinarily or very probably the occasion of a breach of the peace, as, for example, the removal of a land-mark. *Baidya Nath Majumdar v. Nibarān Chunder Gope* (1), *Arun Samanta v. Emperor* (2), *Raj Narain Roy v. Bhagabat Chunder Nandi* (3), *Muthiah Chetti v. Emperor* (4), dissented from.

In this case Manik Rai and others were convicted under section 434 of the Indian Penal Code of the offence of removing a land-mark and were sentenced to a fine of Rs. 25 each. They were also bound over under section 106 of the Code of Criminal Procedure to execute bonds to keep the peace for one year. The Sessions Judge of Ghazipur referred the case to the High Court, being of opinion that the offence punishable under section 434 of the Indian Penal Code was not an offence involving a breach of the peace within the meaning of section 106 of the Code of Criminal Procedure.

Munshi *Haribans Sahai*, for the accused.

KNOX, J.—The accused, have been convicted of an offence under section 434, Indian Penal Code, and they have been sentenced to pay a fine of Rs. 25 each. They have also been ordered under section 106 of the Code of Criminal Procedure to execute a bond for keeping the peace for one year. The case has been sent up by the Court of Session, Ghazipur, with a recommendation that that portion of the order, which was made under section 106 of the Code of Criminal Procedure, be set aside. In support of this reference my attention has been called to several rulings, namely, *Baidya Nath Majumdar v. Nibarān*

*Criminal Reference No. 216 of 1911.

(1) (1902) I. L. R., 30 Calo., 93. (3) (1903) I. L. R., 35 Calo., 315.
(2) (1902) I. L. R., 30 Calo., 366. (4) (1905) I. L. R., 29 Mad., 190.

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Gope (1), *Arun Simanta v. Emperor* (2), *Raj Narain Roy v. Bhagabat Chunder Nandi* (3), *Muthiah Chetti v. Emperor* (4). That the offence of removing a land-mark is in several districts in these provinces too often followed by serious riots and loss of life, is a matter of common experience. I do not say that in every case in which a land-mark is removed, the offences of grievous hurt, *et cetera*, necessarily follow. But if the offence is such an offence that it is as a matter of experience, often followed by breaches of the peace, and if the evidence shows, as in this case it does, that the accused were prepared to accompany the removal of the land-mark by a breach of the peace and were only prevented from doing so by the other side running away, I am of opinion that the offence is one which comes within the terms used in section 106 of the Code of Criminal Procedure "offence involving a breach of the peace." The word "involve" in my opinion connotes the inclusion, not only of a necessary, but also of a probable feature, circumstance, antecedent condition or consequence. I notice in the Calcutta cases that the word "necessarily" is inserted by learned Judges between the word "offence" and the word "involving." This is not the view taken by this Court. The object of the section, as we understand it, is to prevent breaches of peace taking place and not merely to follow up breaches of the peace which have taken place. The Madras Court considers that the words "involving breach of the peace" in this section require that breach of peace should be an ingredient of the offence proved, and that before that section is put in force, there must be a finding that a breach of peace has occurred. This again is not the view taken by this Court. With every respect for the learned Judges who decided the above cases, I prefer to follow the rulings of this Court. I see no reason for interfering and direct that the record be returned.

1) (1902) I. L. R., 30 Calc., 93. 3) (1908) I. L. R., 35 Calc., 315.
2) (1902) I. L. R., 30 Calc., 366. 4) (1905) I. L. R., 29 Mad., 190.