

REVISIONAL CRIMINAL.

Before Mr. Justice C. M. King.

BACHCHU (APPLICANT) v. MUSAMMAT PIYARA
(OPPOSITE PARTY).*

1927
March, 16.

Criminal Procedure Code (Act V of 1898), sections 225 and 537—Distinct offences included in one head of charge, but accused not misled or prejudiced, effect of—Charge sheet, defectiveness of, when renders trial or conviction illegal.

Where a Magistrate acted irregularly in specifying three distinct offences in one head of charge instead of framing a separate charge for each distinct offence, but the accused were not misled or prejudiced by the defective form of the charge and knew perfectly well what offences they were charged with, *held*, that there had been no such substantial defect in the charge sheet as to render the trial or conviction illegal. Such irregularities as these were cured by sections 225 and 537 of the Code of Criminal Procedure as they had not occasioned any failure of justice.

Mr. H. D. Chandra, for the applicant.

The Government Pleader (Mr. H. K. Ghosh),
for the opposite party.

KING, J.:—This is a criminal reference submitted by the Additional Judge of Bahraich with a recommendation that this Court should set aside the convictions and order a retrial after framing the charges properly.

The offences complained of are very petty. According to the case for the prosecution there were five men, namely, the five accused, together at the house of Bachchu (who is one of the accused) and they saw Musammat Piyara taking to the pound some goats belonging to Bachchu. All the accused asked Musammat Piyara to release the goats and when she refused

* Criminal Reference No. 10 of 1927.

to do so Lalla and Badlu instigated the other three accused to assault the girl and rescue the goats, whereupon they did so, and in the course of the assault it is alleged that Bachchu accused also committed an indecent assault upon the girl. All five accused were convicted by the Tahsildar, Magistrate of the second class, under sections 354 and 147, Indian Penal Code, and section 24 of the Cattle Trespass Act. On appeal all the accused excepting Bachchu were acquitted of an offence under section 354, but their convictions under the other sections were upheld. Bachchu's convictions in respect of all the offences charged were maintained.

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Only Bachchu applied to the learned Additional Sessions Judge in revision and the case has now been referred to this Court with a recommendation that the case be retried after framing the charges properly.

I am very much opposed to ordering a retrial in a petty case of this sort. Of the five persons who have been convicted of minor offences only one of them, namely, Bachchu, has gone to the court of the Additional Sessions Judge in revision, and I think the importance of the case does not justify a retrial even if the charges had been framed so irregularly that the trial was vitiated. Although it is true that the charge has been very clumsily drawn up, I think it does comply sufficiently with the provisions of the law in giving the accused notice of the matters with which they were charged. The sections of the Penal Code and the Cattle Trespass Act are mentioned and the accused are charged with having beaten the complainant in pursuance of a conspiracy and having thrown up her clothes making her almost naked and having snatched away her goats.

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A separate charge should have been framed for each distinct offence. The Magistrate acted irregularly in specifying three distinct offences in one head of charge. He must be more careful in future to frame his charges in the form required by law. I would refer him to the forms given in Schedule V of the Code of Criminal Procedure for a "charge with two or more heads." But I do not think the accused were misled or prejudiced by the defective form of the charge.

If the accused had really been prejudiced by any defect in the form of charge they should have made this objection on the earliest possible occasion. As a matter of fact no protest was made regarding any defect in the charge either in the appellate court or in the revisional court below. The accused knew perfectly well what offences they were charged with. In my opinion there has been no such substantial defect in the charge sheet as to render the trial or conviction illegal. Such irregularities as there are are cured by sections 225 and 537 of the Code as they have not occasioned any failure of justice.

Even as regards the conviction under section 147 I am not prepared to hold that the conviction was legally invalid. There were five persons collected together and when they formed the common intention to rescue the goats and to assault the girl they became an unlawful assembly and some of them used force in prosecution of their common object. The conviction under section 147 was not in my opinion absolutely illegal, although it was rather a technical "riot". On the whole I see no reason to interfere in revision.

I reject the reference and order that the record be returned.

Reference rejected.