REVISIONAL CRIMINAL.

1928
July, 14.

Before Mr. Justice E. M. Nanavutty.

RASUL AND OTHERS (APPLICANTS) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE-PARTY).*

Criminal Procedure Code (Act V of 1898), sections 235 and 239—Combination of charges, when can be questioned—Test for determining whether several offences are connected together so as to form one transaction—Offences committed outside the scope of common object but constituting one transaction—Trial of accused for several offences together, legality of.

If in any case either the accused are likely to be bewildered in their defence by having to meet many disconnected charges or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned.

The real and substantial test for determining whether several offences are connected together so as to form the same transaction, depends upon whether they are so related to one another in point of purpose or as cause and effect or as prinipal and subsidiary ats as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not by itself necessarily import want of continuity, though the length of the interval may be an important element in determining the question of connection between the two. *Queen-Empress* v. *Fakirapa* (1), and *Emperor* v. *Sharuf Alli Bhoy* (2), relied upon.

Messrs. *R. F. Bahadurji* and *Haider Husain*, for the applicants.

The Government Pleader (Mr. *H. K. Ghosh*), for the Crown.

*Criminal Revision No. 46 of 1928, against the order of Raghubar Dayal Shukla, 1st Additional Sessions Judge of Bara Banki, dated the 26th of May, 1928, dismissing the order of Syed Mohammad Raza, Magistrate, First Class, dated the 9th of March, 1928, convicting the appellants.

(1) (1891) I.L.R., 15 Bom., 491. (2) (1903) I.L.R., 27 Bom., 135.

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NANAVUTTY, J. :—This is an application for revision against an order of the 1st Additional Sessions Judge of Bara Banki dismissing the appeals of the applicants, Rasul and 28 others, who have been convicted by Syed Mohammad Raza, Deputy Magistrate of Bara Banki, of the offences of riot, hurt, etc., and have also been bound over under section 106 of the Code of Criminal Procedure. I have heard the learned Counsel for the applicants as also the learned Government Pleader and perused the evidence on the record.

The first point argued before me is that the whole trial of the applicants was vitiated on account of the fact that there had been multiplicity of charges in defiance of the express provisions of the Code of Criminal Procedure. The learned Magistrate framed charges under sections 147, 295, 296, 323, 454, 324 and 325 of the Indian Penal Code against all the applicants. In *Queen Empress* v. *Fakirapa* (1) it was laid down that, if in any case either the accused are likely to be bewildered in their defence by having to meet many disconnected charges or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned. This ruling enunciates a sound principle of universal application with regard to trials of criminal cases. Applying these principles I find that the applicants have in no way been prejudiced or bewildered in their defence by the number of charges framed against them. It was further argued before me by the learned Counsel for the applicants that some of the applicants have been convicted of

(1) (1891) I.L.R., 15 Bom., 491.

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offences outside the scope of the common object mentioned in the charge of rioting under section 147 of the Indian Penal Code, and that, therefore, the trial was illegal and void. This contention in my opinion is not sound. The real test to be applied is whether all the offences of which the accused stand charged constitute one transaction. In *Emperor* v. *Sharuf Alli Bhoy* (1) CHANDRAVARKAR, J., laid down the following test :—

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> "The real and substantial test then for determining whether several offences are connected together so as to form the same transaction, depends upon whether they are so related to one another in point of purpose, or as cause and effect, or as principle and subsidiary acts, as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not by itself necessarily import want of continuity, though the length of the interval may be an important element in determining the question of connection between the two."

Applying these principles to the facts of the present case, I find that the learned trying Magistrate was not wrong in framing charges under sections 324 and 325 against particular accused persons, although these offences were committed outside the scope of the common object mentioned in the charge under section 147 of the Indian Penal Code. All the acts with which the applicants have been charged to constitute in the present case one transaction and, therefore, under the provisions of section 235 read with section 239 of the Code of Criminal Procedure, it was open to the

(1) (1903) I.L.R., 27 Bom., 135.

trying Magistrate to try the applicants for all these offences in one and the same trial.

It was further argued before me by the learned Counsel for the applicants that the inclusion in one charge of different offences has vitiated the trial. That is only a formal defect and has not in any way prejudiced the accused or resulted in a failure of justice. It is true that the common object, as disclosed by the evidence, was to disturb the religious assembly of the Hindus and not to commit the offence of house-breaking and house-trespass under section 454 of the Indian Penal Code, but as the offence under section 454 forms part of one and the same transaction which resulted in the riot and grievous hurt, it was not illegal for the trying Magistrate to frame a charge under section 454 also against the applicants. The learned trying Magistrate has passed concurrent sentences against all the applicants in respect of the offences under sections 147, 295, 296 and 454 of the Indian Penal Code. The sentences in respect of the offences of simple and grievous hurt ought also, in my opinion, to run concurrently with the sentences for the other offences with which the applicants have been convicted, because the offences under sections 323, 324 and 325 of the Indian Penal Code were but the logical and natural concommitant of the offence of riot. I, therefore, uphold the convictions of the applicants for the offences with which they have been charged and convicted, but I modify the order of the lower courts by making the sentences in the case of all the applicants run concurrently for all the offences. Finally the learned Counsel for the applicants made a passionate appeal to this Court for remission of the unexpired term of the sentence which had not been served out by the applicants. In view of the circumstances of this case

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and the gravity of the riot, I think it would be misplaced justice to reduce the sentences passed upon the applicants to the term of imprisonment already undergone by them. For the reasons given above I dismiss this application for revision save in respect of the modification made above.

Revision dismissed.

APPELLATE CIVIL.

1928
July, 17.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice E. M. Nanavutty.

ATAULLAH KHAN AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* MUSAMMAT HANSRAJ KUNWAR (DEFENDANT-RESPONDENT).*

Limitation—Formal delivery of possession, effect of, against a transferee of a judgment-debtor in possession from before the suit—Suit more than twelve years after defendant entered into possession, though within twelve years from plaintiff's obtaining formal delivery of possession, whether time-barred.

Held, that whatever might be the effect of the formal delivery of possession under the Code of Civil Procedure as against the judgment-debtor himself, such formal delivery of possession cannot take effect as actual possession as against a purchaser of the right of the judgment-debtor, who has previously obtained actual possession.

A suit, therefore, brought for possession within twelve years from the date of the delivery of possession in favour of the plaintiffs through court, but after twelve years from the date when the defendant entered into possession of the land as purchaser of the property sued for in an auction-sale held in execution of a decree for arrears of rent against the judgment-debtor, is time-barred. *Narain Das* v. *Lalta Prasad* (1), and *Chunni* v. *Musammat Ashrafan* (2), relied upon. *Mahesh Bakhsh Singh* v. *Manohar Lal* (3), distinguished.

*Second Civil Appeal No. 284 of 1927, against the decree of Bishunath Hukku, Subordinate Judge of Partabgarh, dated the 13th of April, 1927, reversing the decree of Avadh Behari Lal, Munsif of Kunda at Partabgarh, dated the 25th of January, 1927.

(1) (1899) I.L.R., 21 All., 269. (2) (1917) 4 O.L.J., 481.
(3) (1915) 18 O.C., 369.