

APPELLATE CRIMINAL.

Before *Jwala Prasad and* Ross, JJ.

AMBIKA SINGH.

v.

KING-EMPEROR.*

1921

December, 2.

*Penal Code, 1860 (Act XLV of 1860), sections 147 and 323—
Assembly composed of persons actuated by lawful object—-one person
killed by member of, and others assaulted—-whether all the members
liable to be convicted of rioting.*

Where, on *K* being assaulted by *B*, a number of persons rushed to the scene and a fracas occurred in which *B* was killed, and *K* and the other persons forming the assembly were convicted under section 147 of the Penal Code and some of them under section 323 also, held, (i) that the convictions under section 147 were not sustainable, the common object of the crowd being to rescue *K* and not to assault *B*; (ii) that in so far as excessive force had been used by some members of the assembly the users of such force were liable to be punished for the assaults committed by them, and not the other members of the assembly; and (iii) that in the absence of proof as to who actually dealt the fatal blow to *B* no member of the assembly was punishable in respect of that blow.

The facts of the case material to this report are stated in the judgment of Ross, J.

Manuk (with him *S. P. Verma.*), for the appellant. The finding is that *Balbhadra* unlawfully attacked *Kirpal* and that thereupon the other accused persons rushed up and there was a fracas in which *Balbhadra* was killed and some members of his party were injured. The common object of the accused person therefore was to protect *Kirpal*. *Balbhadra* had only one serious injury. The person alleged to have caused his death has been acquitted. The injuries to the other members of his party are covered by the right of private defence. The mere fact that one member of an assembly exceeds the right of private defence does not make the assembly unlawful. [*Kunja Bhuiya v. Emperor* (1).]

Manohar Lall (Assistant Government Advocate), for the Crown, replied.

* Criminal Appeal No. 148 of 1921 from convictions and sentences passed by A. C. N^og, Esq., Sessions Judge of Gaya, dated the 14th September, 1921.

Ross, J.—The five appellants have been convicted under section 147 of the Indian Penal Code on a charge of rioting with the common object of assaulting one Balbhadra Singh. Three of them, Ragho Singh, Harihar Singh, and Mutru Singh, have also been convicted under section 323 in respect of hurt caused to certain persons. The sentences under section 147 are two years' rigorous imprisonment each, and those under section 323 are 3 months rigorous imprisonment each, the latter sentences running consecutively to the former.

The learned Counsel for the appellants does not contest the convictions under section 323, but argues that on the findings of the learned Sessions Judge there ought not to have been any conviction under section 147.

The case for the prosecution was that the complainant's party are cultivators of a certain holding and the accused's party represent *ijaradars*. The complainant's party had applied for commutation of rent and this is said to have enraged the accused. On the evening of the 12th of June last about 50 or 60 persons came to the house of Balbhadra and an altercation took place as a result of which Balbhadra was struck on the head a severe blow which caused his death. Certain other persons received slight injuries.

The finding of the learned Sessions Judge does not support the prosecution as regards the occasion of the assault. He finds that Kirpal Singh, one of the accused, who is an old man of 65, had gone to invite Balbhadra to dinner on some social occasion. There had been a question of outcasting and taking back into caste on which Balbhadra differed from Kirpal's view. Balbhadra therefore refused the invitation whereupon there was an altercation which led to Balbhadra's attacking Kirpal Singh and inflicting two injuries upon him with a stick. Kirpal cried out for help and a tumult of people came, and Balbhadra received a fatal injury.

The contention of the learned Counsel for the appellants is that on these facts there was no common object to assault Balbhadra; that the object of the accused was to rescue Kirpal Singh; and that if any of them in the course of effecting that object inflicted grievous

1921
 Ambika
 Singh
 v.
 King-
 Emperor.
 Ross, J.

1921
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 Ambika
 Singh
 v.
 King-
 Emperor.
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 Ross, J.

injuries he was answerable for the injuries he caused, but the assembly, did not become thereby an unlawful assembly. In my opinion this contention is sound. This was not a riot. The accused and others ran to rescue Kirpal Singh and it is impossible to say that if they had not come on hearing Kirpal's cries, he would not have been further assaulted. Excessive force was used by some persons in the course of this transaction and for that these persons have been made answerable. It has not been ascertained who caused the injury to Balbhadra, the prosecution having failed to prove its allegation on this point; but the fact that Balbhadra was fatally hurt by some unascertained person is no reason for convicting all the members of the assembly of rioting.

I would therefore uphold the convictions and sentences of the three persons, Hariher Singh, Ragho Singh, and Mutru Singh under section 323 and would set aside all the convictions of rioting and the sentences passed against all the appellants under section 147. The appellants Ambika Singh and Jagnarain Singh will be released at once.

JWALA PRASAD J.—I agree.

Order modified.

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APPELLATE CIVIL.
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Before Jwala Prasad and Ross, JJ.

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RAJBANS SAHAY.

v.

ASKARAN BAID.*

Execution of decrees—execution sale—price realized less than value entered in sale proclamation, whether sale can be set aside on ground that—Code of Civil Procedure 1908 (Act V of 1908), Order XXI, rules 66 and 90.

Where a dispute between the parties as to the value to be inserted in the sale proclamation under Order XXI, rule 66, of the Code of Civil Procedure, 1908, was settled by consent, and the value agreed upon by the parties was entered in the proclamation,

*Appeal from Original Order No. 144 of 1920, from an order of B. Jandra Chandra Bosu, Subordinate Judge of Gaya, dated the 21st June, 1920.

1921
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 December, 7.