

provision triable along with two other offences of the same kind. We consider that it has done so and we can see no reason why sections 234 and 235 are not to be regarded as cumulative in their effect in a proper case.

In our view, even if the first submission of the learned Government Advocate had failed, the trials at which the petitioner was convicted, were validly constituted, there being no misjoinder of charges.

We accordingly discharge the rule.

Rule discharged.

APPELLATE CRIMINAL.

Before Macpherson and Agarwala, JJ.

ELIZABETH GUTHRIE OR SEN

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 4(1) (i), 275 and 446—“European British subjects meaning of—person not being European British subject whether is a “European”—European British subject tried by court of session in accordance with Chapter XXXIII—majority of jury not Europeans or Americans—trial, whether vitiated—sections 275 and 446.

Section 4(1) (i), Code of Criminal Procedure, 1898, defines “European British subject” as being

“(i) Any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Island or any Colony, or

(ii) Any subject of His Majesty who is the child or grandchild of any such person by legitimate descent.”

Where it appeared from the evidence of *M*, a juror, that he and both of his parents were Anglo-Indian, as that term is

* Criminal Appeal no. 231 of 1933, from a judgment of Khan Bahadur Najabat Hussain, Sessions Judge of Manbhurn-Sambalpur dated the 6th of June, 1933.

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used in recent years, in contradistinction to European, that he never saw his grandparents, that his father long ago mentioned to him that his paternal grandfather was a European sailor who came to India in the early sailing days and that he knew nothing more about his grandfather and nothing whatever of his paternal grandmother or of her marriage, if any;

Held, that *M* did not satisfy the definition of "European British subject" and, therefore, that he was not a "European" within the meaning of section 275 of the Code.

Query: Whether every person who is a European British subject as defined in section 4(1) (i) is a European within the meaning of section 275 of the Code?

A European British subject was tried by a court of session in accordance with the provisions of Chapter XXXIII of the Code and a jury believed to consist of three European and two Indian British subjects was empanelled and was convicted. She preferred an appeal to the High Court and it was contended on her behalf that *M*, one of the three jurors who were believed to be Europeans was in fact not so. The High Court, upholding the contention, found that *M* who did not even satisfy the definition of "European British Subject" was not a European.

Held, that a majority of the jury did not consist of Europeans or Americans as contemplated by section 275, read with section 446 of the Code and, therefore, that the trial was vitiated and a fresh trial should be held.

The facts of the case material to this report are stated in the judgment of the court.

K. B. Dutt and *N. N. Roy*, for the appellants.

Government Advocate, for the Crown.

MACPHERSON AND AGARWALA, JJ.—Mrs. Elizabeth Guthrie or Sen and H. N. Chatterjee, respectively the editor and the printer and publisher of a small weekly newspaper called "The Sketch" published at Dhanbad, appeal against their convictions under section 500 of the Indian Penal Code on two charges of defamation and their sentences of fine.

It was admitted by appellants that articles headed "Curious Conduct of Police Sub-Inspector-Interesting Revelations" and "Facing the Music—By a Piping Jenny" appearing in nos. 35 and 36 respectively of "The Sketch" dated the 8th and 15th August, 1932, are defamatory of the complainant, a Sub-Inspector of Police, and the defence was that the statements made are true in substance and were made in good faith for the public good. The first appellant, who is forty years of age and who landed in India for the first time (as is stated at the Bar) with her five children several weeks after the statutory declaration by the second appellant on the 3rd December, 1931, and the start of "The Sketch", holds herself out as responsible for the articles which had their origin in the prosecution of her husband, a lecturer at the School of Mines, on the report dated the 8th of June of the Sub-Inspector, on a charge of cycling at night without a light in Dhanbad and his conviction on the 3rd August, 1932. The matter of the articles and the English in which they are written would seem to indicate that they are not her own composition and it may be that she is only a dummy editor. But this point, if it is of any value, does not fall to be considered in this appeal.

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The claim of the first appellant to be a European British subject and to be tried in accordance with the provisions of Chapter XXXIII of the Code of Criminal Procedure having been allowed, the Magistrate committed both accused to the sessions. Under section 446, the Court of Session is to try the case as if the accused had claimed to be tried in accordance with the provisions of section 275 under which

" a majority of the jury shall, if the accused before the first juror is called and accepted so requires, consist, in the case of a European British subject, of persons who are Europeans or Americans, and, in the case of an Indian British subject, of Indians."

On behalf of the first appellant this claim was duly made, as the learned Sessions Judge notes in his heads of charge to the jury, and a jury believed to consist

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of three Europeans and two Indian British subjects was empanelled. This jury returned a majority verdict of guilty and the Judge recorded his agreement therewith and convicted both accused.

In support of the appeal Mr. K. B. Dutt has argued, as was open to him under section 449(1), that the conviction is unsound on the merits and further, on the strength of an affidavit, that the trial was invalid by reason of the fact that the composition of the jury was not in accordance with law.

The argument against the validity of the trial had two branches. In the first place, it was contended that one of the Bengali jurors was the complainant's wife's uncle's wife's sister's husband or, more briefly, the complainant's uncle-in-law had married the juror's sister-in-law and that the complainant having failed to disclose the fact, the accused was prejudiced. We are not prepared to say that the trial was invalid for this reason. But the other contention is more serious. It was alleged that only a minority of Europeans or Americans served on the jury, the second of the jurors empanelled as a European who may be designated Mr. *M*. (which is not the initial of his name) being in fact Asiatic and not, as supposed, a European.

The point appeared to call for investigation. It is the case of all parties that Mr. *M* is not an American and we so hold. The learned Government Advocate has contended that Mr. *M* is a 'European British subject' as defined in section 4(1) (i) of the Code and that that fact is sufficient to bring him within the category of 'European' referred to in section 275. The definition runs:

" A European British subject means—

(i) Any subject of His Majesty of European descent in the male line born, naturalized or domiciled in the British Islands or any Colony, or

(ii) Any subject of His Majesty who is the child or grandchild of any such person by legitimate descent."

A question might arise whether every person who is a European British subject under this definition is a European within the meaning of section 275; but it is unnecessary to express an opinion upon it since it appears to us that Mr. *M* does not even come within the definition. Mr. *M* has appeared before us and has deposed that he is and that both his parents are Anglo-Indian, as that term is used in recent years in contradistinction to European, that he never saw his grandparents, that his father long ago mentioned to him that his paternal grandfather was a European sailor who came to India in the early sailing days and that he knows nothing more about his grandfather and nothing whatever of his paternal grandmother or of her marriage. The learned Government Advocate proposed to adduce the evidence of Mr. *M*'s father who is alive and apparently in this province, but after a postponement he has been constrained to inform the Court that he will not now do so. In these circumstances the fact that in appearance Mr. *M* is other than European and that his name does not sound European but the contrary, has some significance. We hold without hesitation that Mr. *M* cannot be said to satisfy the definition of 'European British subject' and admittedly he is not a European within the meaning of section 275 if he fails to do so. It is clear, therefore, that two at most of the five jurors were Europeans or Americans.

Upon this finding the sessions trial was not legally constituted. The appeal must, therefore, be allowed. The convictions and sentences are set aside and as it has not been established that the conviction is unsound on the merits and as the parties have not compromised, as seemed possible at one stage, it is directed that the accused be now tried, with all reasonable expedition, in the Session Court at Purulia with a jury satisfying the provisions of section 275 of the Code of Criminal Procedure.

*Appeal allowed.
Convictions and sentences set aside.*

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