REVISIONAL CRIMINAL.

Before Manohar Lall and Chatterjee, JJ.

1938.

April, 28, 29.
May, 5.

SATNARAIN DAS

v.

KING-EMPEROR.*

Penal Code, 1860 (*Act XLV of* 1860), *section* 99—*right of private defence.*

The right of private defence can be exercised only in special circumstances and with the restrictions imposed by section 99 of the Penal Code. The important considerations which always arise in order to determine whether the action of the accused is covered by the right of private defence are, firstly, what is the nature of the apprehended danger and, secondly, whether there was time to have recourse to the Police authorities, always remembering that when both the parties are determined to fight and to go up to the land fully armed in full expectation of an armed conflict in order to have a trial of strength, the right of private defence disappears.

Queen-Empress v. *Pryag Dutt*(1), *Ghyasuddin Ahmad* v. *Emperor*(2), *Anup Singh* v. *Emperor*(3), *Ramphal Das* v. *Emperor*(4), *Fauzdar Rai, In re*(5), *Subedar Singh* v. *King-Emperor*(6), *Matte Mandal* v. *Emperor*(7) and *Ramlagan Singh* v. *Emperor*(8), reviewed.

Ramsagar Gope v. *Emperor*(9), distinguished.

The natural tendency of the law of all civilised states is to restrict within constantly narrowing limits the right of self-help and it is certain that no other principle can be

* Criminal Revision no. 149 of 1938 and Criminal Revision no. 189 of 1938, against an order of A. Salisbury, Esq., I.C.S., Additional Sessions Judge of Muzaffarpur, dated the 2nd February, 1938, dismissing an appeal from the order of Maulvi Syed Faruq Azam, Subdivisional Magistrate of Muzaffarpur, dated the 13th December, 1937.

(1) (1898) I. L. R. 20 All. 459.
(2) (1932) I. L. R. 11 Pat. 523.
(3) (1935) Cr. Rev. 588 of 1935 (Unreported).
(4) (1929) A. I. R. (Pat.) 705.
(5) (1917) 3 Pat. L. J. 419.
(6) (1933) 14 Pat. L. T. 228.
(7) (1932) 13 Pat. L. T. 193.
(8) (1936) Cr. Rev. 319 of 1936 (Unreported).
(9) (1936) 18 Pat. L. T. 21.

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safely applied to a country like India. If a person prefers to use force in order to protect his property when he can, for the protection of such property, easily have recourse to the public authorities, his use of force is made punishable by the Penal Code, no matter what the intention of the person may be.

The mere fact that one party came on the field first would not justify him to have resort to force.

Kabiruddin v. *Emperor*(1), applied.

Applications in revision.

The facts of the case material to this report are set out in the judgment of Manohar Lall, J.

Sir Sultan Ahmed and *A. K. Mitra*, for the petitioners in Cr. Rev. 149 of 1938.

Sarjoo Prasad, for the petitioners in Cr. Rev. 189 of 1938.

Assistant Government Advocate, for the Crown.

MANOHAR LALL, J.—*Criminal Revision no.* 149: This is an application in revision on behalf of 13 persons who have been convicted by the learned Subdivisional Officer of Muzaffarpur for offences under sections 148 and 147, Indian Penal Code. Two of the petitioners, namely, Satnarayan Das and Babaji Raut, were also convicted under section 326, Indian Penal Code and sentenced to various terms of imprisonment—the sentences to run concurrently. The convictions and sentences have been upheld in appeal by the learned Additional Sessions Judge of Muzaffarpur.

The facts which are necessary to be stated in order to determine the questions agitated before this Court and which have now been concurrently found by the two courts of fact are these: On the 5th and 6th May, 1937, complainant Harnandan purchased the land in dispute by means of two documents from some persons who were neither the heirs of the

(1) (1908) I. L. R. 35 Cal. 368.

admitted owner, Manrup deceased, nor were in possession of this land. On the 14th May, 1937, the same property was purchased by means of a registered kebala by Sudarsan Das, chela of the mahant Ramlakhan Das of Chourauth, from some persons who were the rightful heirs of Manrup and who were also in possession thereof up to the date of the transfer. The land is in village Khoria in which the complainant's party live and has an area of 2 bighas and 4 kathas at a distnce of about two miles from the village Chourauth. The accused who are adherents of Sudarsan Das live either in village Chourauth or in the neighbourhood. Ever since the date of the rival purchases there was an apprehension of a breach of the peace between the two kebaladars; rumours of this apprehension had reached the police authorities who on being informed deputed a dafadar to remain at the spot in order to see that no serious breach of the peace occurred. On the morning of the 3rd July, 1937, choukidar Ramphal Raut was sent by the dafadar to go and inform the Sub-Inspector about the immediate apprehension of a breach of the peace between the men of Sudarsan Das on the one side and Harnandan and others on the other; he reached the police-station at about 11 A.M. and came back to the spot with the Sub-Inspector but by this time the marpit had already taken place. After the choukidar was sent to the police-station the situation evidently became very tense and the dafadar, Janki Singh, states that as he had learnt that Harnandan Raut of Khoria and Mahant Ram Lakhan Das's men were going to come into conflict and have a marpit in village Khoria he went to Ram Lakhan Das and on enquiries Ram Lakhan told him that he knew nothing about it, Sudarsan Das was there but he said nothing. On going to village Khoria, however, he met Harnandan who told him that he had a document for the land from before and that he expected that a mob would come from village Chourauth and that he would resist. Acting on this information he had sent the choukidar to the police-station as stated already. But soon

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after, to use the exact words of the dafadar as translated,

> " the mob of both sides came and I asked them not to fight..... They were also asked to avoid a breach of the peace and wait for the daroga who was to come..... None of the parties listened to me and there was a marpit."

As a result of the encounter between the two parties a very serious riot took place on the spot.

Upon these facts the petitioners have been convicted for having been members of an unlawful assembly the common object of which was " by force or show of force to enforce a right or a supposed right " of the land in dispute in village Khoria.

Sir Sultan Ahmad, appearing for the petitioners, contends that when it is found that the title and possession of the land in village Khoria was with the accused party the convictions under sections 147 and 148, Indian Penal Code, are not maintainable. He relies upon the concurrent findings of fact of the courts below to the effect that

> " Harnandan Raut and others purchased the land under a mere colourable pretence of title "

and that the

> " conveyance deeds executed in favour of Harnandan and others are spurious documents in order to set up mere colourable pretence of title ".

It must be remembered, however, that the right of private defence can be exercised only in special circumstances and with the restrictions imposed by section 99 of the Penal Code. The important considerations which always arise in order to determine whether the action of the accused is covered by the right of private defence are, firstly, what is the nature of the apprehended danger and, secondly, whether there was time to have recourse to the police authorities, always remembering that where both the parties are determined to fight and go up to the land fully armed in full expectation of an armed conflict in order

to have a trial of strength the right of private defence disappears. In the present case there are very clear findings of fact in these terms that

"Mahant's men went to the place with the full knowledge that they would be opposed by the Gwalas of village Khoria. Harnandan's party also came there with full consciousness that they will have to fight them. Both parties were out for a trial of strength; the simultaneous arrival of the mobs shows a state of preparation on both sides. The mobs were in no mood to listen to the remonstrance of the dafadar who asked them to wait till the arrival of the Sub-Inspector. The plain fact is that men on both sides came with the avowed object of meeting force with force and violence with violence."

The findings are also clear that

"No portion of the land was cultivated with any crop. There was no standing crop on the land anywhere. No property was in danger of being destroyed. No harm would have accrued if the parties were to wait for the police to whom information had already been sent."

In my opinion these findings bring the present case within the well-known rule of law laid down by a large number of cases some of which will be noticed presently and render the action of the accused punishable.

It was argued by Sir Sultan Ahmad, however, that upon the findings arrived at in this case it is clear that the Mahant's men had already ploughed up 5 kathas of the disputed land and had also dug up 1½ kathas out of 11 kathas and therefore he argues that the petitioners, who were in peaceful occupation and engaged in the ploughing of a portion of the land to which their title by purchase has been proved, were justified in resisting by force the forcible aggression by the men of the complainant's party who came immediately after with the avowed object of dispossessing them; in other words, he contends that the petitioner's party was the first to be on the field. But this contention must be rejected because, as laid down in the case of *Kabiruddin* v. *Emperor*(1), "such an enunciation of law would be dangerous to the peace of the country. It would justify a regular race between two factions as to who should arrive first". In my opinion since it is found that the police were

(1) (1908) I. L. R. 35 Cal. 868, 880.

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present on the spot and were dissuading the parties not to fight but to await the arrival of the Sub-Inspector who had been sent for, that there was no immediate danger whatsoever of any property (in this case, as I have already pointed out, there was no standing crop on the land nor any valuable structure which was going to be demolished) and when both the parties knew, the one expecting an immediate attack from the other, the object of the assembly of the petitioners was not to prevent an aggression but to try out their strength by means of a pitched battle.

The law applicable under these circumstances has been the subject of consideration in a large number of decisions in this Court. In my view the true position has been accurately summed up in two recent cases of this Court where the correct distinction was pointed out as to the limits of the applicability of the law laid down by the Calcutta High Court in the case of *Queen Empress* v. *Pryag Dutt*(1) and by this Court in *Ghyasuddin Ahmad* v. *Emperor*(2). My brother Rowland in the case of *Anup Singh* v. *Emperor*(3) has summed up the position in law as follows: " The law is thus stated in *Queen-Empress* v. *Pryag Dutt*(1) ' there can be no right of private defence where the riot is premeditated on both sides unless the object of the assembly is shown to have been to repel forcible and criminal aggression'. In *Ramphal Das* v. *Emperor*(4) the above dictum was adopted. In *Ghyasuddin Ahmad* v. *Emperor*(2) the decision turned on ' whether it is proved that Udro Singh (i.e. accused's party) had grown this tori crop and that his possession required to be protected by force against the offence of theft '. That question being answered in the negative conviction resulted. These decisions recognise, and it is well settled, that in appropriate cases the right of private defence is an

(1) (1898) I. L. R. 20 All. 459.
(2) (1932) I. L. R. 11 Pat. 523.
(3) (1935) Cr. Rev. 588 of 1935 (unreported).
(4) (1929) A. I. R. (Pat.) 705.

answer to a charge of rioting. There is no inconsistency between the above decisions and such cases as *Fauzdar Rai*(1) and *Subedar Singh*(2). These were cases in which the person in possession of property saw an actual invasion of his rights which invasion amounted to an offence under the Penal Code. He was entitled to defend himself and his property by force and to collect such numbers and such arms as were necessary for that purpose, there being no time to get police help.

The cases of *Kabiruddin*(3) and of *Matte Mandal*(4) were cases in which the accused, claiming rights in the one case of irrigation in the other of fishery, knowing those alleged rights to be disputed, having no particular occasion or necessity to exercise them on the day of occurrence, went forth under arms expecting and intending to bring on a violent encounter. It was held that whether their claim was good or bad, there could be no right of private defence in those circumstances. The observations made in those cases must be read with reference to those circumstances ".

In my opinion this proposition of the law which have been summarised by the learned Judge apply in its full vigour to the circumstances of the present case. My brother Noor in the case of *Ramlagan Singh* v. *Emperor*(5) had again to consider the identical question and agreed with the observations of Rowland, J. in the case from which I have quoted in extenso above and pointed out that in the case before him, as in the present case, the accused knew full well that the constables were there and also that there were men on behalf of the complainant's party who would resist the removal of the crop and of the hut; and although it may be noticed that the hut and the crops

(1) (1917) 3 Pat. L. J. 419.
(2) (1933) 14 Pat. L. T. 228.
(3) (1908) I. L. R. 35 Cal. 368.
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(5) (1936) Cr. Rev. 319 of 1936 (unreported).

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were found in that case to belong to the accused but nevertheless the learned Judge held: "Therefore, from the circumstances it is clear that they went there to exercise their right by use of criminal force or show of criminal force". The natural tendency of the law of all civilised states is to restrict within constantly narrowing limits the right of self-help and it is certain that no other principle can be safely applied to a country like India. If a person prefers to use force in order to protect his property when he can, for the protection of such property, easily have recourse to the public authorities his use of force is made punishable by the Indian Penal Code, no matter what the intention of the person may be. The law says that he must not use force in such cases but should invoke the aid of the tribunals charged with the enforcement of the law [*per* Holloway, J.(1)].

Lastly, reliance was placed upon the latest decision of this Court in the case of *Ramsagar Gope* v. *Emperor*(2) but the facts of that case are entirely different. In that case it is pointed out that "the circumstances in which an aggrieved party is bound to have recourse to the public authorities instead of taking his own measures for the defence of his property are not always easy to determine; but at least it is lawful for a person which has seen an invasion of his rights to go to the spot and object. It is also lawful for such person, if the opposite party is armed, to take suitable weapons for his defence". The Court, however, in that case negatived the contention advanced on behalf of the Crown that there was evidence in the case that both parties had gone to the spot determined to fight and held that bearing in mind that the accused party were in effective possession at the time of the occurrence having grown the khesari crop they were entitled to go to the land to see that their crops were not removed by the complainant's party and when the complainant's party

(1) (1873) 7 Mad. H. C. R. XXXV (notes).
(2) (1936) 18 Pat. L. T. 21.

came it was found that the accused did not resort to use of force but seemed to have shown on the other hand some amount of forbearance. The learned Judges pointed out that the fight began when an attack was made on Prahlad up to which time the accused were entirely in the right and it was held that when the assault began the prosecution party became unlawful assembly and the accused had a right of private defence.

Upon a careful consideration of the circumstances in the present case I am of opinion that the conviction of the accused must be maintained.

The question which has greatly troubled us is the imposition of a proper sentence of imprisonment. On the one hand it is quite clear that the accused had title and possession of the land for which they had paid valuable consideration to the persons who had a right to sell but on the other the accused did not listen to the remonstrances of the dafadar who had sent for the Sub-Inspector to come to the spot and instead prepared themselves for a battle in full expectation of being resisted by the Gowalas at a time when no immediate danger of their person or property was apprehended. It is pointed out, however, that the party of the accused was very severely assaulted in the encounter. The injuries on the accused party have been given in detail at pages 8 and 9 of the judgment of the learned Additional Sessions Judge. In these circumstances I consider that the ends of justice will be met if the accused in this case be sentenced each to six months' rigorous imprisonment; the sentences under section 326, Indian Penal Code, will be concurrent. In the result the convictions of the petitioners are maintained with the variation ordered above.

Sentence reduced.

Criminal Revision no. 189: This is a counter case arising out of the facts which led to the institution of proceedings against the accused which has just been disposed of in Criminal Revision no. 149

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of 1938. It is unnecessary to deal with the relevant facts separately in this judgment. We have heard Mr. Sarjoo Prasad on behalf of the petitioners at great length but we are unable to come to the conclusion, as he contends, that the Gowalas were in possession of the land and that the findings of fact of both the courts below were vitiated because they went into the question of title of Harnandan. It was certainly open to the courts to go into the question of title incidentally in order to decide whether they could believe the evidence of possession and in order to see which of the parties was really acting in exercise of his right or whether he was making out a pretence to engage in a pitched battle. In my opinion there are very clear findings of fact of both the courts which make it impossible for this Court to interfere in revision. The facts found are that the accused without any show of title or right, having secured a spurious document from a person not in possession, went armed in order to engage in a pitched battle with the persons who were expected to come on behalf of the Mahant to support Sudarsan Das who had obtained a sale deed from the original owners who were in possession of the land in village Khoria and that the accused refused to resist from a fight although the dafadar had tried his utmost to dissuade them from so doing. The accused Harnandan, the leader of the accused party, definitely told the dafadar in the morning that he was expecting an attack from the Mahant's side but as he had a document in his favour he would resist the attack with force of arms. In this case I agree with the learned Additional Sessions Judge that " the accused party engaged in a pitched battle to take forcible possession of the land and that this action must be sternly discouraged. The petitioners are not men who have been brought down to crime by poverty; they acted in contumacious defiance of the law ". I would, therefore, dismiss the application of these petitioners in revision. In my opinion the sentences awarded are quite appropriate.

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We desire to express our appreciation of the action of the Subdivisional Officer who insisted on obtaining a charge sheet in the teeth of the final report submitted by the local police. It is difficult to understand how in the case of such a serious riot the police could submit a report with the remarks that the matter was of a civil dispute. A perusal of the record shows that the Superintendent of Police very rightly insisted on the 3rd August, 1937, that a charge-sheet should be called for in the interest of justice against both the parties.

CHATTERJI, J.—I agree.

Rule discharged.

J. K.

APPELLATE CIVIL.

Before Fazl Ali and Agarwala, JJ.

1938.

April, 25, 26.
May, 5.

DWARKADAS GOBINDRAM FIRM

v.

SALIGRAM REKHRAJ FIRM.*

Execution—decree transferred to another court for execution—application to recall the proceedings, whether is a step-in-aid of execution—powers of the Court transferring a decree for execution—Limitation Act, 1908 (*Act IX of* 1908), *Article* 182—*Code of Civil Procedure*, 1908 (*Act V of* 1908), *section* 41.

A court when it transfers a decree for execution does not thereby altogether lose control over the decree and is quite competent to recall it. Therefore, an application made to the court transferring the decree to recall the executors proceedings is a step-in-aid of execution made in accordance with law before the proper court.

* Appeal from Appellate Order no. 307 of 1937, from an order of Babu Radha Krishna Prasad, Subordinate Judge of Chaibassa, dated the 10th September, 1937, confirming an order of Maulavi Saiyid Ahmad, Munsif of Jamshedpur, dated the 13th February, 1937.