APPELLATE CRIMINAL.

Before Dalip Singh J.

DHANWANTRI (CONVICT) Appellant

versus

THE CROWN—Respondent.

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June 20.

Criminal Appeal No. 661 of 1933.

Criminal Procedure (Punjab Amendment) Act, IV of 1930, Section 3: Case committed to Special Tribunal—Extension of the Act cancelled during pendency of case—Jurisdiction of ordinary Criminal Courts to try the case—Concurrent jurisdiction.

Under the Criminal Procedure (Punjab Amendment) Act, IV of 1930, the trial of certain accused persons in Delhi, including the appellant, was ordered to be by the Special Tribunal appointed under the Act. The case accordingly proceeded before the Tribunal but before any charges were framed the Government of India issued a Notification cancelling its Notification extending the Act to the province of Delhi. The Commission thereupon dispersed without passing any final orders in the case, with the result that a fresh trial was made by the Special Magistrate of the 1st class at Delhi with enhanced powers and the accused-appellant was convicted under Section 107, Indian Penal Code, and Section 19 (*f*) of the Arms Act. On appeal to the High Court it was contended that the order for trial by the Special Tribunal had conferred upon the accused *the right* to be tried by that Court and no other and that that Court had not been legally dissolved—and, secondly, that if the Tribunal had not exclusive jurisdiction that Court having once seizin of the case, no other Court could proceed to try it.

Held, that there is nothing in Act IV of 1930 by which exclusive jurisdiction is conferred on the Special Tribunal, all that it enacts is that the Local Government may constitute a Special Court with special procedure to try certain offences and it may order certain persons to be tried by that special Court, which means nothing more than that the ordinary Courts and the Special Tribunal shall have concurrent jurisdiction over certain offences.

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Held also, that save for the special procedure provided in the Criminal Procedure Code to prevent the continuance of two trials in different Courts regarding the same offence, and the right of the accused, if one Court has already arrived at a conclusion and delivered a judgment, to plead *autrefois convict* or *autrefois acquit;* there is no law or principle under which the jurisdiction of one Court is ousted merely by another Court having taken seizin of the case.

The objections taken by the accused, therefore, repelled.

Appeal from the order of Mr. E. S. Lewis, Special Magistrate, 1st Class, exercising enhanced powers under Section 30, Criminal Procedure Code, Delhi, dated the 28th April, 1933, convicting the appellant.

SHAMAIR CHAND and SHAM LAL, for Appellant.

CARDEN-NOAD, Government Advocate, and ABDUL AZIZ, Public Prosecutor, for Respondent.

DALIP SINGH J.—The Appellant in this case has been convicted by the learned Special Magistrate under section 307, Indian Penal Code, and sentenced to seven years' rigorous imprisonment. He has also been convicted under section 19 (*f*) of the Indian Arms Act and sentenced to three years' rigorous imprisonment, the two sentences running consecutively. DALIP SINGH J.

Before dealing with the facts of this case it is necessary to dispose of a preliminary objection which was raised by the learned counsel for the appellant as to the jurisdiction of the Magistrate to try this case. The facts concerned with this objection are that on the 21st of November, 1930, Act IV of 1930, which came into force in the Punjab on 11th November, 1930, was extended to Delhi. On 9th April, 1931, the Local Government of Delhi ordered that this appellant should be tried on the charges on which he has now been convicted, by the Special Tribunal provided

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for under Act IV of 1930. The case accordingly proceeded before the Special Tribunal but before any charges were framed, on 3rd February, 1933, the Government of India issued a notification cancelling the notification of 21st November, 1930, extending the Act to the province of Delhi. The argument of the learned counsel is that though the Act no longer extended to the province of Delhi the Court which had been constituted under that Act was never dissolved by the Local Government at Delhi which alone could dissolve the said Court. He contends that the Act might have ceased to apply to the province of Delhi but that would not *ipso facto* dissolve the Court nor could a notification of the Imperial Government dissolve the Court which could only be constituted by the Local Government and therefore could only be dissolved by the Local Government by an order in writing as provided in the Act read with the Indian General Clauses Act section 21. It appears to be correct as a matter of fact that the Local Government at Delhi never passed any order removing the Commissioners appointed or declaring that they had ceased to be Commissioners. It was evidently assumed that the orders of the Supreme Government of India were sufficient for this purpose. The learned counsel's contention therefore is that the Court which was originally seized of this case is still in existence and as that Court had exclusive jurisdiction no other Court is empowered to try this case. He contends that the repeal of an Act creating a certain Court or a certain procedure would not cause the jurisdiction of the Court to cease at any rate so far as pending cases are concerned. In the alternative he contends that if the Court had not exclusive jurisdiction the Court had jurisdiction and

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having once *seizin* of the case no other Court could proceed to try the same case. The points raised by the learned counsel might have created considerable difficulty but it is unnecessary to enter into a detailed discussion of them because it seems to me that neither of the hypotheses of the learned counsel really exist. I find nothing in Act IV of 1930 by which exclusive jurisdiction was conferred on the Special Tribunal. All that that Act declares is that, if so advised, the Local Government may constitute a special Court with special procedure to try certain offences and it may then order certain persons to be tried before that special Court. This really means nothing more than that the ordinary Courts and the Special Tribunal have concurrent jurisdiction over certain offences. The first contention, therefore, that the Special Tribunal had exclusive jurisdiction to try this case is not correct. The second contention of the learned counsel is, that granting there is concurrent jurisdiction and one Court has taken up the case the jurisdiction of the other Court is ousted by the first Court taking *seizin* of the case. I know of no law or principles of law leading to this result. It may happen even under the Criminal Procedure Code in the case of what is known as continuing offences that two Courts may have jurisdiction to try the case. Both Courts might proceed to try the case in ignorance of the proceedings of the other Court. A special procedure is provided in the Criminal Procedure Code for such cases to prevent the continuance of two trials regarding the same offence, but apart from the special procedure I know of no principle by which Courts of concurrent jurisdiction could not proceed to try the same offence. Of course where one Court had arrived at a conclusion

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and delivered a judgment it would be open to the accused to plead *autrefois convict* or *autrefois acquit* but that is a different question altogether from holding that the proceedings in one or other of the Courts are *coram non judice*. I, therefore, repel this contention also and hold that the Special Magistrate had jurisdiction to try this case.

Coming now to the merits of the case I see no reason to doubt the direct evidence showing that the appellant Dhanwantri was seen by two police officers Ghulam Rasul and Gian Chand passing along the Nai Sarak with a companion and that the two police officers pursued Dhanwantri and his companion and that, while the chase continued down Chandni Chowk, Dhanwantri and his companion separated, Dhanwantri running on the right side of the Chandni Chowk and his companion going off towards the left. Mohammad Afzal constable hearing a police whistle turned round and saw Dhanwantri and tried to catch him. Dhanwantri turned round and fired a pistol at the constable which struck the whistle that the constable had in his pocket and then passed through the side of the constable and the bullet remained lodged inside and was extracted subsequently as the medical evidence shows. Very pluckily the constable, though temporarily knocked out, continued the chase, Dhanwantri again fired at him but missed and his magazine being presumably exhausted he was seized by Mohammad Afzal, the pistol was snatched away by Constable Abdul Majid who along with Head Constable Mohammad Haider also appeared on the scene and the appellant was then removed to the Kotwali where a *fard* was prepared of the recovery of the pistol. The main point urged by the learned counsel

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for the appellant on the merits is that the pistol was, on 21st April, 1932, before the Special Tribunal, shown to be defective by Vidya Bhushan who was an accused before the Special Tribunal. His contention is that the pistol has remained all along in the custody of the police. In its present condition the magazine is defective and the last two cartridges at any rate cannot be fired from this pistol. He further contends that the ejector is defective and the pistol could at most be fired once and once only. Now, the evidence of the prosecution is that in all probability this pistol was fired four or five times (see the evidence of H. C. Ghulam Rasul), and according to all the evidence of the prosecution witnesses it was fired at least twice. It appears from the prosecution evidence that the pistol after being taken charge of by the police remained in the *malkhana*, nobody cleaned it or oiled it, and it seems to me quite possible that rust may have effected the ejector at any rate to account for its present defective condition. So far as the magazine is concerned, the learned counsel contends that rust could not possibly affect the spring of the magazine. The learned Government Advocate does not admit this proposition and there is no evidence on the record to show me what the position may be as regards the spring. Be that as it may, after allowing for certain natural extravagances in the evidence of the police constables as to the particular part they played in this affair and the courage they showed in arresting the appellant I see no reason to doubt the evidence as to the actual use of the pistol by the appellant. It must be borne in mind that the appellant himself denied the possession of a pistol altogether. His learned counsel, while not admitting that he had a pistol, has wisely

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confined himself to contesting that he might have had a pistol but he did not use it in the manner suggested by the prosecution. In considering, therefore, the evidence of the prosecution and weighing its truth it is an important fact to note that the appellant himself never raised exactly the case that his learned counsel has raised for him in appeal. I therefore consider that on the merits he has been rightly convicted under section 307, Indian Penal Code, for it is obvious from the place where the bullet struck that the shot was aimed with the intention of seriously injuring the police constable who was chasing the appellant and with reckless disregard as to whether his life was or was not endangered by doing so. When a man uses a deadly weapon like a pistol in such a fashion the presumption against him is that he intended to cause death. I see no reason why the presumption should not be drawn against the appellant in this case. It follows that he has also been rightly convicted under section 19 (*f*) of the Indian Arms Act.

The only question remaining is a question of sentence. It is a serious offence to shoot at policemen with pistols while the policemen are endeavouring to discharge their duties and I would not ordinarily have interfered with the sentence passed in the case but I bear in mind that for no fault of his the appellant has been an under-trial prisoner for nearly two and a half years and bearing this in mind I order that the two sentences should run concurrently. The appeal is otherwise dismissed.

N. F. E.

Appeal dismissed save in part.