31 C. 983 (=8 C. W. N. 839.)

1904
JUNE 1, 7.

CRIMINAL REVISION.

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[983] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

EMAMAN v. EMPEROR.*

[1st, 7th June, 1904.]

Presidency Magistrate—Judgment—Record of Reasons for conviction—Evidence—Sentence of imprisonment—Criminal Procedure Code (Act V of 1898) s. 370, cl. (i).

S. 362 of the Criminal Procedure Code prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months, shall be duly recorded There is no obligation in law to record evidence in other cases; the discretion rests with the Magistrate.

Under the provisions of s. 370, cl. (*i*) of the Criminal Procedure Code, the Magistrate should state the reasons for conviction in such a manner that the High Court on revision may judge whether there were sufficient materials before him to support the conviction.

The law does not demand a full and complete statement of reasons, but only a brief one.

RULE granted to the petitioners, Emaman and others.

This was a Rule calling upon the Chief Presidency Magistrate of Calcutta to show cause why the conviction of the petitioners should not be set aside and a new trial ordered on the grounds :—

(1) that the judgment of the said Magistrate was not in accordance with law, that the examination-in-chief had not been properly recorded, nor had the substance of the cross-examination been recorded;

(2) that the evidence as recorded was not sufficient to sustain the conviction of the petitioners;

(3) that the judgment did not disclose the common object, and upon the facts disclosed no offence under s. 143 of the Penal Code had been made out;

[984] (4) that the record of the case, the trial of which was somewhat protracted, was not sufficient to enable this Court to deal with the case adequately upon revision.

An Inspector of the Calcutta Police laid a charge before the Chief Presidency Magistrate that on the 28th March 1904 the petitioners, together with certain other persons, formed an unlawful assembly and created a disturbance in Harrison Road with the common object of causing hurt to some of the residents by throwing stones and brickbats. The petitioners, twelve in number, were tried by the Chief Presidency Magistrate and convicted on the 2nd May 1904 under s. 143 of the Penal Code and sentenced each to undergo twenty-one days' rigorous imprisonment. Eighteen witnesses for the prosecution were examined and cross-examined on the 7th, 16th and 19th April 1904.

It was alleged by the petititioners that most of the witnesses for the prosecution underwent four sets of cross-examination on behalf of the accused, but that no portion of the cross-examination had been recorded by the said Magistrate, with the exception of one sentence with regard to one witness. That in cross-examination some of the witnesses had denied having seen the occurrence, while others had retracted what they had said in their examination-in-chief or had made statements, which were wholly inconsistent with the case for the prosecution.

* Criminal Revision No. 481 of 1904, against the order of D. Weston, the Chief Presidency Magistrate of Calcutta, dated May 2, 1904.

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The evidence of the witnesses for the prosecution were recorded by the Chief Presidency Magistrate as follows :—

James Shevlin, Colootalla Thanah—
Saw fight in Harrison Road between party factions, Baman Bagan and Kala Bagan. Identifies (1) and (3).

Lakshmi Narain Sing, Constable.
Arrested accused No. (1) as he was throwing bricks.

Naulakh Chobe, Chowkidar.
Arrested accused No. (2) in the act of throwing brickbats.

Gulzan Hossain, Constable
Arrested accused No. (4) as he was throwing bricks.

The evidence of the remaining witnesses was recorded in a similar manner.

[985] The judgment of the Chief Presidency Magistrate was as follows :—

The case arose on the 10th day of the Mohurrum when processions were brought out. The accused in this case are members of one party who came to blows with members of another party accused in a connected case. The only evidence against the accused, No. 8, Chundu, is that of one constable, who deposes that the accused was there. This evidence is uncorroborated, I therefore give accused No. 8 the benefit of the doubt. Accused Dedar Bux is not mentioned by any of the witnesses. As to the remaining accused, Nos. 1 to 5, viz., Emaman, Subdal, Dad Ali, Bhutu, Romjan, and No. 13, Fazi, were arrested red-handed in the act of throwing brickbats. No. 1 pleads that he was arrested on his way from the mosque, but besides the evidence of the constable Lakhmi Narain who arrested No. 1, there is the evidence of Inspector Shelvin, Sergeant Shawa Baj Khan, who saw No. 1 among the combatants. Accused Nos. 2 to 5 call no defence. Accused No. 13 calls one witness to prove an *alibi*, but in spite of what he says, the accused may have been at the place at the time. As to the accused No. 6, Salim, constable Ashrafi Lal deposes that he arrested him on the spot, but accused escaped, and this constable deposes he has known Salim for five years. One witness Mohadeo assigns to Salim a prominent part, from which it would appear that he had started the disturbance. He calls three witnesses to prove he was tending his sick brother, who subsequently died of plague. Accepting as true the depositions of two of the three, Dahue and Salamat, they prove no *alibi* ; as to the third, Romjee, the witness was positive that Salim had not left the house all day. In cross-examination he admitted that he and accused had gone to the mosque. In view of the prosecution evidence I discredit the *alibi*. As to No. 7, Chatta, the witness Hafiz deposes that he was struck on the head with a lathi by the accused, and Shahabat Khan also saw him throwing brickbats. It will be noted that the constable Bendaswari Tewari deposed to arresting the accused on the spot, but as he could not identify him in Court, it is clear he mistook the man. Two constables Ashrafi Lal and Ramanand Singh depose to seeing No. 9, Demri, throwing bricks. He and Hemait Ali accused call witnesses to prove that they were working at the jetty all day ; whereas Hemait Ali was identified by three witnesses as having taken part in the affray. Apart from this it is extremely doubtful that these two accused on the great day in the Mohurrum should have been working as usual. Accused No. 10, Guffor, was seen by two witnesses Sergeant Shawa Baj Khan and Mohadeo, throwing brickbats. Accused No. 11 too, Taribi, was seen by the same Sergeant and two constables, witnesses, joining in the affray. He calls one witness to prove his *alibi* and the witness deposes that accused was at a feast at witness' house. Evidence of this nature is too easily fabricated to have any rebutting effect. Fazli accused was arrested on the spot ; he endeavours to prove an *alibi*, but admitting the truth of the deposition it furnishes no *alibi*.

The *Standing Counsel* (Mr. *Sinha*) for the Crown. S. 370 of the Criminal Procedure Code provides that a Presidency [986] Magistrate instead of recording a judgment in the ordinary way is only to record certain particulars mentioned in that section. It is only where imprisonment or a fine exceeding Rs. 200 is inflicted that a Magistrate is to record a brief statement of his reasons for the conviction. S. 362 of the Code provides how the evidence in a case should be recorded by a Presi-

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dency Magistrate, where he imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months. In no other case is it necessary for a Presidency Magistrate to record any evidence. The judgment in the present case was recorded under cl. (*i*) of s. 370. The question is whether the statement of the reasons is sufficient to support the conviction. I submit it is sufficient. The Magistrate has found what the common object of the unlawful assembly was. The substance of the evidence generally is given in the judgment. That is really all that is necessary. The reported cases do not go so far as to lay down that details of the evidence of each witness must be recorded. It must be remembered that there is no appeal in this case. In the case of *Yacoob* v. *Adamson* (1) there was no evidence on the record to support the conviction, nor did the Magistrate give any reasons for the conviction. The Magistrate in the present case has recorded evidence and given sufficient reasons. In *Moteeram* v. *Belaseeram* (2) it was held that as the sentence in that case was one of fine the Magistrate's order was sufficient, it being only necessary for him to record his decision shortly. In chapter XXII of the Criminal Procedure Code, which deals with summary trials, will be found s. 263, which indicates what should be recorded in cases, where there is no appeal. Cl. (*h*) of that section corresponds with cl. (*i*) of s. 370. In *Queen-Empress* v. *Mukundi Lal* (3) the learned Judge points out what would be sufficient for a judgment within the meaning of cl. (*h*) of s. 263. If that finding is correct, the judgment in this case is quite sufficient. A brief statement of reasons does not mean a brief summary of the evidence of each witness. There should be in the judgment such findings of facts as would show that the conviction was justified, and not whether the Magistrate's view of the evidence was right or wrong. *The* [987] *Empress* v. *Panjab Singh* (4), *Queen-Empress* v. *Shidgauda*(5), *Dina Nath Talukdar* v. *Jogendra Narain Majumdar* (6).

Mr. *Jackson* (Babu *Monmotho Nath Mookerjee* with him) for the petitioners. In *Queen-Empress* v. *Mukundi Lal* (7) Mr. Justice Knox was sitting alone, and his decision is opposed to that of every High Court in India. *Queen-Empress* v. *Shidgauda* (5) is opposed to his decision and is in accordance with the decisions of the Calcutta High Court. How is it possible in this case for your Lordships to decide whether the Magistrate was right or wrong without knowing what the evidence is? How is it possible to determine whether the decision of the Magistrate as to the *alibis* of the accused is right or wrong without knowing what evidence was given by them? It is incumbent on the Magistrate to put on record sufficient evidence to justify his order: *Aiunddi Sheikh* v. *Queen-Empress* (8), *Natabar Ghose* v. *Provash Chandra Chatterjee* (9). The evidence in this case proves nothing, nor does it show what offence has been committed. The cross-examination lasted for several hours, yet none of it has been recorded. If the Magistrate thought it was irrelevant he should have stopped it. The evidence and the reasons recorded should be such as to show how the conviction could be supported. Suppose the petitioners wanted to prosecute the police for perjury in this case, how could it be done?

Cur. adv. vult.

(1) (1886) I. L. R. 13 Cal. 272.
(2) (1886) I. L. R. 14 Cal. 174.
(3) (1899) I. L. R. 21 All. 189.
(4) (1881) I. L. R. 6 Cal. 579.
(5) (1893) I. L. R. 18 Bom. 97.
(6) (1900) 6 C. W. N. 40.
(7) (1899) I. L. R 21 Cal. 189.
(8) (1900) I. L. R. 27 Cal. 450.
(9) (1900) I. L. R 27 Cal. 461.

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PRATT AND HANDLEY, JJ. The twelve petitioners were convicted by the Chief Presidency Magistrate of an offence under section 143 of the Indian Penal Code and were sentenced each to 21 days' rigorous imprisonment. A Rule was issued to show cause why the conviction should not be set aside and a new trial ordered chiefly on the ground that the record of the case, the trial of which was somewhat protracted, is insufficient to enable this Court to deal with the case adequately upon revision.

[988] We have heard Mr. Jackson for the petitioner and the learned Standing Counsel for the Crown and have considered the authorities cited which lay down the rule that the Magistrate should state the reasons for conviction in such a manner that this Court on revision may judge whether there were sufficient materials before him to support the conviction. Section 362 of the Code prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months, shall be duly recorded. There is no obligation in law to record evidence in other cases. In section 370 it is enacted that instead of recording a regular judgment, a Presidency Magistrate need only record certain specified particulars (*a*) to (*h*) and (*i*) "in all cases in which the Magistrate inflicts imprisonment or fine exceeding Rs. 200 or both, a brief statement of the reasons for the conviction."

Now in the present case the record of the evidence is undoubtedly very meagre. It is urged that it is usual for Presidency Magistrates, at all events in cases where accused is represented by Counsel, to record the evidence with some fulness and that this arrangement is convenient for the parties as well as for the Magistrate in preparing his judgment. This may be so, but we are unable to prescribe a procedure, which the law has not rendered obligatory. The discretion rests with the Magistrate and we cannot rule otherwise. The Magistrate explains that he thought it necessary to record the evidence only so far as it bore on the question of identification. Turning to the "brief statement of the reasons for conviction," we find that the Magistrate sets out in a closely written statement of two pages of foolscap the following particulars. The case arose on the 10th day of Mohurrum when processions were brought out. The accused in this case are members of one party who came to blows with members of another party. He then disposes of the case against two of the 14 accused against whom the evidence was insufficient and whom he acquits. Then he refers to five men, who were arrested red-handed, as he says. Only one of them called evidence in his defence to show that he was arrested away from the scene, but this evidence the Magistrate could not accept against the testimony of an Inspector and a Sergeant, who saw accused among the combatants when the [989] constable arrested him. The Magistrate proceeds to indicate the evidence against No. 6. Of the witnesses to an *alibi* two speak of a time subsequent to the riot, so the Magistrate very properly considers that they prove no *alibi*; as to the third witness the Magistrate gives full reasons for not believing him. In a similar way the Magistrate indicates the evidence bearing on each of the remaining accused persons. As regards the *alibi* set up by them the Magistrate treats the evidence somewhat curtly, no doubt, but we know what evidence of this class is generally worth, and when the Magistrate had before him strong evidence for the prosecution, we cannot say that the view he took was at all unreasonable.

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The law does not demand a full and complete statement of reasons, but only a brief one. Following the rule which we cited at the outset we are of opinion that there is no sufficient reason for interfering with the conviction in this case. At the same time we think that as no serious harm was done and as the petitioners have suffered some imprisonment besides incurring heavy legal expenses, the ends of justice do not require that they should be sent back to jail. In lieu of the unexpired terms of imprisonment we direct that they do each pay a fine of Rs. 10, or in default be rigorously imprisoned for ten days.

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31 C. 990 (=8 C. W. N. 781=1 Cr. L. J. 778.)

[990] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

SHYAMANAND DAS PAHARAJ *v.* EMPEROR.*

[3rd June, 1904.]

Public servant, Order promulgated by—Hats—Disobedience—Breach of the peace—Penal Code (Act XLV of 1860), s. 188—Criminal Procedure Code (Act V of 1898) s. 144.

Although a Magistrate acting under s. 144 of the Criminal Procedure Code is empowered to make an order prohibiting a person from holding a *hat* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hat* shall be held upon certain days, leaving the party no option to hold his *hat* upon some other days than those on which his rival holds his *hat*.

Before a person can be convicted under s. 188 of the Penal Code for having disobeyed an order passed by a Magistrate under s. 144 of the Criminal Procedure Code, there must be some evidence on the record showing that the disobedience of the Magistrate's order was likely to lead to a breach of the peace.

RULE granted to the petitioner, Shyamanand Das Paharaj.

This was a rule calling upon the District Magistrate of Balasore to show cause why the conviction of the petitioner should not be set aside, on the ground that the order said to have been disobeyed, was not one which could have been lawfully passed under s. 144 of the Criminal Procedure Code; and why in any event the sentence should not be reduced or modified.

A zemindar called the Bhuyan of Mangalpara was the owner of a *hat* at Bhaguri, which used to be held on Sundays and Wednesdays. The petitioner established a rival *hat* at Baldiapara, about two miles from Bhaguri, which he also caused to be held on Sundays and Wednesdays. It being apprehended that the holding of the rival *hat* at Baldiapara would lead to a disturbance, the [991] District Magistrate of Balasore on the 17th December 1903, passed an order under s. 144 of the Criminal Procedure Code directing the petitioner to hold his *hat* at Baldiapara on Tuesdays and Saturdays. On the 15th February 1904 the petitioner was convicted under s. 188 of the Penal Code in a summary trial by the Deputy Magistrate of Balasore for having disobeyed the said order, and sentenced to undergo simple imprisonment for one month.

* Criminal Revision No. 494 of 1904, against the order of W. Teunon, Sessions Judge of Cuttack, dated April 26, 1904, affirming the order of Rash Behari Naik, Deputy Magistrate of Balasore, dated Feb. 15, 1904.