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CRIMINAL
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## [288] CRIMINAL REVISION.

YAKUB ALI v. LETHU THAKUR.*
[29th August, 1902.]

*Rioting, charge of—Conviction—Appeal.—Acquittal—Convictions of house-trespass and hurt, legality of—Criminal Procedure Code (Act V of 1898) ss. 232 and 423—Penal Code (Act XLV of 1860) ss. 147, 323 and 448.*

The accused were convicted of rioting. That was the only charge before the Magistrate. On appeal the Sessions Judge acquitted them of rioting, but convicted them under ss. 448 and 323 of the Penal Code of house-trespass and hurt.

*Held* that the convictions by the Sessions Judge should be set aside, that the offences were distinct and separate offences, which should have formed the subject of separate charges, and that the accused had been prejudiced by the omission of those charges.

[Ref. 15 Cr. L. J. 704=26 I. C. 152=18 C. W. N. 1276; 11 Cr. L. J. 340=5 Ind. Cas. 974=7 M. L. T. 202; 22 I. C. 764=15 Cr. L. J. 188; 38 Mad. 552; 53 I. C. 620; (1916) 2 M. W. N. 267=17 Cr. L. J. 381=35 I. C. 816.]

RULE granted to the petitioners Yakub Ali and others.

This Rule was issued upon the District Magistrate of Chittagong to show cause why the order of the appellate Court convicting the prtitioners under ss. 448 and 323 and setting aside the conviction by the Magistrate under s. 147 of the Indian Penal Code should not be set aside on the ground that the petitioners had never been charged with offences under those sections or been required to go into their defence in regard thereto.

On the 24th March 1902 the complainant Lethu Thakur received certain information in consequence of which he saw one of the petitioners, Prosono Kumar Dey, who was a postman, and asked him, if he had got a money-order for him. The petitioner replied that he had paid the money to one Tafil Ali, whereupon the complainant was annoyed and said he would complain against the petitioner. On the night of the 28th March the complainant was called upon to open the door of his hut, and upon doing so the petitioners entered the hut, and having produced a piece of [289] paper and an inkpad asked the complainant to put his thumb-impression on the paper. He refused to do so. Thereupon the petitioners forcibly caused him to put his thumb-impression on the paper.

The petitioners were convicted on the 23rd of May 1902 under s. 147 of the Penal Code by the Deputy Magistrate of Chittagong. On appeal the Sessions Judge of Chittagong acquitted the petitioners of the charge of rioting, but convicted them of offences under ss. 448 and 323 of the Penal Code.

Mr. *Caspersz* (Babu *Joy Gopal Ghose* with him) for the petitioners. The petitioners were charged and convicted under s. 147 of the Penal Code. The Sessions Judge has acquitted them under that section, but has convicted them under ss. 448 and 323 of the Code. These are, however, distinct offences, and the petitioners should have been separately charged with regard to them. The charge under s. 147 was the only charge against them before the Magistrate, and the conviction on appeal by the Sessions Judge under the other sections is illegal. The petitioners have not had an opportunity of meeting those charges and

* Criminal Revision No. 679 of 1902, against the order passed by H. E. Ransom, Sessions Judge of Chittagong, dated June 9th, 1902.

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have been greatly prejudiced by their omission. See *Jatu Sing* v. *Mahabir Singh* (1).

PRINSEP AND MITRA, JJ. The petitioners were convicted by the Magistrate of rioting under section 147 of the Indian Penal Code. On appeal the Sessions Judge, after setting out the case for the prosecution, states :—" If the above story be accepted, it is clear that the proceedings were not such as can be properly designated a riot," and he accordingly acquitted the petitioners of that charge. That charge was the only charge in the proceedings of the trial before the Magistrate. The Sessions Judge, however, thought proper on the evidence to convict the petitioners of house-trespass (section 448) and hurt (section 323), but those offences were distinct and separate offences, which should have formed the subject of separate charges. The Magistrate in his explanation seems to think that they are both offences within the terms of that charge as set out by him and within the definition **[290]** of the offences of rioting. The Magistrate is clearly wrong in this respect. The charge does not set out anything amounting to house-trespass ; and although hurt is generally committed in the course of rioting, it does not necessarily follow that hurt is so caused, and indeed from the facts set out in the judgment it does not appear that hurt was caused. It is stated that the accused seized Lethu and forcibly affixed his thumb-mark to a rag. But in so doing it does not necessarily follow nor is it so found that they caused bodily pain to Lethu so as to constitute the offence of hurt. We have also considered in connection with this matter whether, within the terms of section 232 of the Code of Criminal Procedure, the accused have been prejudiced by the omission of charges of house-trespass and hurt, and we think that they have been so prejudiced, inasmuch as if those offences had been charged, the defences made might have been of an entirely different character.

The conviction and sentence are accordingly set aside.

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30 C. 291=(30 I. A. 44=7 C. W. N. 193=5 Bom. L. R. 1=8 Sar. 412.)

## [291] PRIVY COUNCIL.

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## JAGADINDRA NATH ROY *v.* SECRETARY OF STATE FOR INDIA.*

[18th, 19th November and 13th December, 1902.]

[*On appeal from the High Court at Fort William in Bengal.*]

***Evidence**—Thakbust and survey maps—Act IX of* 1847, *ss.* 3, 5 *and* 6—*Permanent Settlement of* 1793—*Liability of lands to assessment—Onus of proof—Suit for wrongful assessment.*

Maps and surveys made in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made.

They are not conclusive, and may be shown to be wrong ; but in the absence of evidence to the contrary they may be judicially received in evidence as correct when made.

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* *Present* :—Lords Macnaghten and Lindley, Sir Andrew Scoble, Sir Arthur Wilson and Sir John Bonser.

(1) (1900) I. L. R. 27 Cal. 660.