

## APPELLATE CRIMINAL.

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

1881  
*Feb. 18.*

IN THE MATTER OF THE PETITION OF JUBDUR KAZI AND GOLAB KHAN.  
THE EMPRESS *v.* JUBDUR KAZI AND GOLAB KHAN.

*Practice — Cumulative Sentence — Separate Charges — Criminal Procedure Code (Act X of 1872), s. 454, illus. (f) — Penal Code (Act XLV of 1860), ss. 147, 148, and 324.*

Under s. 454 of the Criminal Procedure Code, the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the graver offence.

*Quere.*—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal?

THESE two appeals arose out of the same trial. The prisoners Jubdur Kazi and Golab Khan having been members of an unlawful assembly, some of whom were armed with spears and shields, and some with lathes, which took place on the 12th Kartick 1256, corresponding with the 28th October 1879, and resulted in the death of one man named Guru Churn, and in severe injury to another named Babul Chund. The prisoners were charged, along with others, on several charges under the Indian Penal Code, but the Sessions Judge, concurring with the assessors, acquitted Jubdur Kazi of the graver charges under s. 302 and s. 304, and Golab Khan of those under s. 324 and s. 326; but convicted them both under s. 148 and also under s. 149, coupled with s. 324, and sentenced them each, under s. 148, to three years' rigorous imprisonment; and further, under s. 149, coupled with s. 324, to a further term of two years' rigorous imprisonment, to commence on the expiry of the former sentence; and further sentenced the first prisoner Jubdur Kazi, under s. 148, to pay a fine of Rs. 200, or in default to suffer a further term of six months' rigorous imprisonment. Against these sentences both the prisoners appealed to the High Court.

\* Criminal Appeals, Nos. 22 and 15 of 1881, against the order of C. A. Kelly, Esq., Sessions Judge of Furridpore, dated the 17th November 1880.

Mr. *L. M. Ghose* and Baboo *Baido Nath Dutt* for the appellant Jubdur Kazi.

1881

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Baboo *Juggodannud Mookerjee* for the Crown.

No one appeared on behalf of the other appellant, Golab Khan.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—These appeals arise out of the same trial. The appellants have been convicted of being members of an unlawful assembly, in which one Guru Churn received fatal injuries and one Babul Chund was less severely hurt.

It seems that they were acquitted of any offence as respects the death of Guru Churn, the conviction being for rioting armed with deadly weapons under s. 148, and for hurt caused to Babul Chund under s. 324, read with s. 149 of the Penal Code. The periods awarded being three years under s. 148, and two years under ss. 149 and 324.

The learned counsel who appeared for Jubdur Kazi, appellant in No. 22, confined himself to urging that the sentences passed upon his client were in excess of what could be passed according to law, and that the injuries caused to Babul Chund by one of the members of the unlawful assembly, not found to be his client, were not caused in prosecution of the common object of the assembly.

The learned counsel's contentions apply equally to the case of Golab Khan, for whom, however, he did not appear.

The first point turns upon s. 454 of the Criminal Procedure Code, which provides for collective punishment either for one offence falling within two separate definitions of law, or for acts severally constituting more than one offence, but collectively coming within one definition. In the former case one punishment, and in the latter separate punishments, may be awarded; but in the former case it must not exceed what can be awarded for either offence, and in the latter they must not collectively amount to more than could have been awarded for any one of

1881  
 IN THE MAT-  
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 PETITION OF  
 JUBDUR  
 KAZI AND  
 GOLAB  
 KHAN.

the several offences, or for the combined offence. Illustration (f), which is referred to by the Judge, shows that offences under ss. 147, 324, 152 may be separately dealt with.

In this case the conviction is for offences under ss. 147 and 324, and this Court has held that separate convictions under those sections are not legal: *vide* the case of *Queen v. Durzoola* (1). There is, however, a contrary ruling in the case of *Queen v. Callachand* (2), followed apparently in *Empress v. Ram Adhin* (3); but whether there can be separate convictions or not, it is certain that, under s. 454, Criminal Procedure Code, the collective punishment must not exceed that which may be given for the graver offence: *Reg. v. Tukaya Bin Tamana* (4).

We shall, therefore, reduce the sentences on these appellants to three years in each case.

It is not necessary to discuss the second question raised in the appeal of Jubdur Kazi.

*Sentence modified.*

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## PRIVY COUNCIL.

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P. C.\*  
 1880  
 Nov. 12.

BHUBANESWARI DEBI (ONE OF THE DEFENDANTS) *v.* HARISARAN SURMA MOITRA (PLAINTIFF).

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

*Evidence—Secondary Evidence of Contents of Document.*

By the law of evidence administered in England, which has been in a great measure, with respect to deeds, made the law of India, the first condition of the right to give secondary evidence of the contents of a document not produced in Court, is the accounting for the non-production of the original.

APPEAL from a decree of the High Court of Bengal (22nd December 1874), modifying a decree of the Subordinate Judge of the District of Rungpore (13th December 1872).

\* *Present*:—SIR J. W. COLVILLE, SIR M. E. SMITH, and SIR R. P. COLLIER.

(1) 9 W. R., Cr., 33.

(3) I. L. R., 2 All., 139.

(2) 7 W. R., Cr., 60.

(4) I. L. R., 1 Bomb., 214.