CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Ryves.

RAM KHELAWAN SINGH

v.

EMPEROR.*

1909 *March 10.*

Rioting—Right of Private Defence—Protection of Zemindar's right to Property—Excessive hurt by one member of an unlawful assembly—Criminal liability of the other members thereof—Penal Code (Act XLV of 1860) ss. 147, $\frac{326}{149}$.

Where the tenants were found to have held their lands on the *batai* system, under which harvested crops should be taken to the village *khalihan*, but it appeared that they went in a large body armed with *lathis* with the avowed intention of removing them to their own houses, and were making up the crops already cut into bundles, whereupon the zemindars' watchmen remonstrated and a number of their *amlas* went to the spot armed with *lathis* and swords and a fight took place, owing to the interference of the leader of the tenants, in the course of which some of the tenants received slight incised wounds and one of them a severe one inflicted by one of the accused, and where it further appeared that the zemindars' people had, four days before the date of the occurrence, sent an urgent appeal to the police for protection against a serious breach of the peace which seemed imminent:—

Held, that, inasmuch as the common object of the accused was to protect the zemindars' rights over the crops, and there was no specific finding by the Sessions Judge that their intention was to use more force than was necessary or that they had in fact used excessive force, they acted in the exercise of the right of private defence and were not guilty of rioting.

Held, also, that, as there was nothing to show that the grievous hurt caused by one of the accused was not his own individual act, the others were not guilty under ss. $\frac{326}{149}$ of the Penal Code.

Each case of this kind must be decided on its own particular facts.

Baijnath Dhanuk v. *Emperor* (1) distinguished.

THE appellants and 12 others were convicted, on the 23rd December 1908, by the Sub-divisional Officer of Barh, variously, under sections 147, 148, 324 and $\frac{326}{149}$ of the Penal Code, and sentenced to different terms of imprisonment, some

* Criminal Revision No. 75 of 1909, against the order of C. W. E. Pittar, Sessions Judge of Patna, dated Jan. 13, 1909.

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being also sentenced to fines, and were further bound down under section 106 of the Criminal Procedure Code for one year. On appeal the Sessions Judge of Patna by his order, dated the 13th January 1909, acquitted 12 of the accused, and convicted four under section 147 and four under section 148 of the Penal Code, setting aside the fines and the order under section 106.

It appeared that there was a dispute between the landlords and the tenants as to the nature of their tenancy, the former asserting that it was *bhaoli* and the latter that it was *nugdee*. Both Courts found that the tenants held their lands *bhaoli* on the *batai* system under which the crops when cut should have been taken to the village *khalihan* and the shares of each party there distributed. The time for harvesting had arrived, and the tenants openly expressed their intention to remove the crops to their own villages. In consequence of an apprehended disturbance, the appellant, Bhim Lall, as head *punch* of the circle, sent a letter, on the 16th September 1908, to the police informing them of the dispute and the likelihood of a serious breach of the peace from the attempt on the part of the tenants to assert their claim of *nugdee* tenure and to reap the crops, and of the opposition that would be offered by the zemindars' *amlas*, two of whom were named and were among the appellants. Some watchmen were placed on the fields to guard the crops on behalf of the zemindars. On the 20th of September, before the police could send assistance, the tenants, forty or fifty in number and armed with *lathis*, proceeded to the lands and began collecting the crops which had been cut before in bundles. The watchmen remonstrated, and the accused arrived on the scene armed with *lathis* and swords. For a time a breach of the peace was averted, but, owing to the aggressive attitude of one Shyama Mahton, the "champion" of the tenants, a fight took place. Some of the tenants received slight sword cuts, but Shyama was severely injured by one Peari who had since died.

The common object set out in the charge was "to prevent Shyama Mahton and the other tenants of Kazichuk from cutting and harvesting the *makai* crop in their fields, and

also to assault the tenants for having cut the same, notwithstanding the protests of the zemindars' servants."

The Sessions Judge found that it could not have been the *object* of the accused to prevent the cutting of the crops or to punish the tenants for having done so, but that the intention was to prevent them from carrying off the *makai* in order to protect the zemindars' rights. He held that the landlords had an undoubted right to prevent the removal of the crops and their disposal in such a manner that no division could take place, a course which would have entailed serious loss on them and involved them in unnecessary litigation, but that the question was how far they were justified in sending a body of men to prevent the threatened invasion of their rights, and that, if the accused went with the intent of using criminal force more than was necessary, they would be guilty of being an unlawful assembly. He found that they were not justified in forming an unlawful assembly to enforce their right by means of criminal force, and that they were aware that there was a probability of causing greater harm than was necessary for avoiding any harm to the property in dispute.

Mr. Ali Imam (*Mr. Huq* and *Syed Enayet Karim* with him), for the petitioners, argued mainly that upon the findings of the Sessions Judge the right of private defence was established.

No one showed cause.

CASPERSZ AND RYVES JJ. This Rule was issued on the District Magistrate of Patna to show cause why the conviction and sentences passed on the petitioners should not be set aside on the ground that they (the zemindars' people) were acting in the exercise of their right *bonâ fide* in preventing the tenants from harvesting the crops in any place other than the village *khalihan*.

We have heard learned counsel in support of the Rule, and perused the judgments of the lower Courts. Twenty persons were originally charged, variously, under sections 147 and 148, and under sections 324 and $\frac{326}{149}$ of the Indian Penal

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Code, and convicted and sentenced to various terms of imprisonment. Some of them were also ordered to pay fines, and all of them were bound down under section 106 of the Criminal Procedure Code to keep the peace for one year.

On appeal, the learned Sessions Judge acquitted twelve and convicted eight persons. Of these, four were convicted under section 148 of the Indian Penal Code and the remaining four under section 147. The rest were acquitted, the fines were remitted, and the order under section 106 was discharged. These eight persons whose convictions were upheld obtained the Rule set out in the beginning of this judgment.

The common object of the rioters, as charged, was (i) to prevent by force, or show of force, the tenants from cutting the crops, and (ii) to assault them by way of punishment for having cut the crops.

The facts of the case, as found by the learned Sessions Judge, are as follows. For a considerable time past there has been a dispute between the tenants and the zemindars as to the nature of their tenancy, the tenants asserting that their tenancy was *nugdee*, whereas the zemindars asserted that it was *bhaoli*. The time for harvesting the crops had arrived, and the tenants had openly expressed their intention of cutting the crops and carrying them away to their houses. The friction between the parties had became so acute that two watchmen were placed on guard on behalf of the zemindars, and an urgent appeal was made to the police authorities for protection as a serious breach of the peace seemed imminent. This happened on the 16th September 1908. The occurrence, with which we are concerned, took place four days subsequently, that is, on the 20th September. In the meantime, it appears that some of the crops had been cut and left on the field. It has been found by both the Courts that the tenants held their land on the *batai* system. The crops, therefore, when cut, should have been taken to the village *khalihan*. On the morning of the 20th September, it has been found that, a large number of tenants armed with *lathis* went to the field with the avowed intention of carrying away the crops, which

had already been cut, to their own houses, and actually began making bundles of the harvested *makai*. The watchmen who had been placed there protested, and a number of the *amlas* of the zemindars came to the spot, armed, some with *lathis* and, it is said, six of them with swords. Their common intention, it is found, was to protect the zemindars' property. For a time, apparently, they were successful in preventing a breach of the peace, until one Shyama Mahton, who is described in the lower Court's judgment as "the champion of the tenants," interfered. According to the first informations given by one of the tenants himself, the tenants insisted on their right to "take away the crops, and began making them up into bundles when the zemindars' people prevented them." Thereupon a fight took place, and persons on both sides were injured. Some of the tenants had incised wounds, though, with the exception of Shyama Mahton, not of a severe character, which makes it more probable that some of the zemindars' *amlas* had swords and used them. The only severe injury to Shyama Mahton was inflicted by one Peari who has since died.

The learned Sessions Judge has found that the common object in the charge, on which the accused were tried, has not only *not* been proved, but it could not have been their object. The common object which he has found, although the accused were not charged with it, was to prevent the tenants from carrying away the crops. He has found that the tenants were the aggressors in the fight, that they had no right to take the crops to their own houses, and that both the watchmen were wounded in the fight. He goes on to say :—"Up to a limit they (the zemindars) had, no doubt, a right to prevent the harvesting in the manner intended by the tenants. But under the criminal law they were not justified in forming an assembly for enforcing that right by means of criminal force." Earlier in his judgment, after referring to section 81 of the Indian Penal Code, he held :—"Now in the present case, the landlords had an undoubted right to prevent their crops being so disposed of that no division could take place, which would have

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entailed serious loss to them and would have involved them in unnecessary litigation. The question is how far they were justified in sending a body of men to prevent the threatened invasion of their rights. If the assembly went with the intention of using criminal force more than was necessary to prevent that, the members would be guilty of forming an unlawful assembly."

There is no finding in the judgment, however, that the intention of this assembly was to use more force than was necessary, nor is there any finding that they, in fact, did use more force than was necessary, though this may be inferred from the Judge's order convicting the petitioners. There is nothing to indicate that the common object of the assembly was to do anything more than protect their masters' property. We do not think that in protecting their masters' property they were not justified in using such force as was necessary to prevent the tenants from carrying away the crops. The only severe injury that was inflicted by them appears to have been caused, as we have said, by Peari who has died. It may be that Peari used more force than was necessary, but there is nothing to show that it was not an individual act of his, or that the assembly, which in its inception was not unlawful, became an unlawful assembly subsequently.

Each case of this kind must be decided on its own particular facts. The facts in this case are distinguishable from those in the case of *Baijnath Dhanuk* v. *Emperor* (1).

We think that in this case, on the findings arrived at by the learned Sessions Judge himself, the Rule must be made absolute. We, therefore, acquit the accused and discharge them from their bail.

E. H. M. *Rule absolute.*

(1) (1908) I. L. R. 36 Calc. 296.