# CRIMINAL REVISION.

*Before Mr. Justice Woodroffe and Mr. Justice Coxe.*

1908
April 22

## MANARUDDI
*v.*
## EMPEROR.*

*Rioting—Several alternative common objects charged—Judgment of Appellate Court—Omission to find whether the charge was sustainable and which common object has been proved.*

Where a charge, as drawn up by the Magistrate, alleges several alternative common objects of the unlawful assembly, it is incumbent on the Appellate Court to determine, whether it is sustainable, and if so, which of the common objects stated has been made out.

The petitioners, four in number, were placed upon their trial before the Subdivisional Magistrate of Brahmanberia, and were convicted and sentenced, on the 20th December 1907, three under section 147 of the Penal Code, and the fourth, Saijamma, under sections 147 and 325 of the same.

The charge drawn up against all the petitioners stated that they had "committed the offence of rioting by attacking Kallu (the complainant) and others and causing hurt to Kallu and others, the common object being to dispossess Kalu from a field by criminal force, or to compel Kallu by criminal force not to transplant paddy in that field, which he was legally entitled to do, or to obtain possession of that field by means of criminal force to Kallu's party."

There was an additional charge against the petitioner Saijamma under section 325 of the Penal Code.

The Magistrate found that the occupancy right in the disputed land was with one Badan Shah, who agreed to sell it to Saijamma for Rs. 85 in December 1906, that the latter ploughed the land, grew paddy on it and reaped the crop in August 1907, but could not pay the stipulated price, and that Badan in consequence

* Criminal Revision No. 225 of 1908 against the order of A. H. Cumming, Sessions Judge of Tipperah, dated the 10th January, 1908.

sold the land to the complainant, Kallu, on the 19th October 1907.

He did not expressly determine, who was in possession from the 19th to the 22nd October, the date of the occurrence, but he was of opinion that on the latter date the complainant and his party had gone to the field before the petitioners, and had finished transplanting in half the field, when the accused came up and a mutual fight ensued. He held that the accused had under the circumstances no right of private defence, but he did not specifically find in his Judgment what the particular common object of the unlawful assembly was.

The petitioners appealed to the Sessions Judge of Tipperah, who dismissed the appeal.

His judgment was as follows:—

It appears that the complainant had bought a certain field, and on the day of occurrence went to transplant it. Saijamma, who claims to have a *burga* settlement of the field, went and prevented this, and a fight ensued. It is found by the lower Court, and in this I agree, that the complainant's party were first in the field. Saijjamma argues that the land was his by *burga* settlement, and hence that he had the right of private defence of his property. Now I think it is quite clear from the number of persons engaged in the fight and the weapons, *lathis* and spears used, that the complainant, when he went there, expected to be opposed, and that the accused party were equally determined to resist by force any attempt on the part of the complainant to transplant paddy, or take possession of the land in any way. The lower Court finds it admitted that the complainant was there first and the accused party came and tried forcibly to oust them. Whatever may be the respective right or title of the two parties to the land, it is quite clear that neither party had the right of private defence against the other.

*Mr. Caspersz* (with him *Babu Tarak Chandra Chuckrabutty*) for the petitioners. The charges are not sustainable on the merits. Further, the Appellate Court has not expressly found any particular common object. Three alternative common objects were alleged in the charge, and it was the duty of that Court to have come to a finding as to which of these objects was established: see *Sabir* v. *Queen-Empress*(1), *Poresh Nath Sircar* v. *Emperor*(2).

*Deputy Legal Remembrancer* (Mr. Orr) for the Crown. The Appellate Court may not in so many words have found a specific common object in the judgment. But it had before it the charge

(1) (1894) I. L. R. 22 Calc. 276. (2) (1905) I. L. R. 32 Calc. 295.

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and the evidence, and the judgment is based thereon. It must, therefore, be taken that the Court, when it upheld the conviction, meant to hold that the charge as drawn up by the Magistrate was established, and that the one or the other of the common objects set out had been proved. It is not even necessary that the charge should itself contain a statement of the common object: See *Budhu* v. *Mussamut Lachminia*(1).

WOODROFFE AND COXE JJ. The points raised are reasonably clear. They are these—that three alternative common objects were alleged in the charge. It is contended that the charges are unsustainable. It is further contended that no common object, as stated in the charge, has been found in the judgment.

It is necessary that the Appellate Court should determine whether the charges are sustainable and, if so, which of them has been made out. The Rule must, therefore, be made absolute. The appeal must be re-heard.

*Rule absolute.*

E. H. M.

(1) (1905) 9 C. W. N. 599.