

CRIMINAL REVISION.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

MANIRUDDIN

v.

EMPEROR.*

1908

Feb. 18.

Private defence, right of—Common object, as found by Trying and Appellate Courts—Penal Code (Act XLV of 1860) ss. 96—106.

No right of private defence arises where a large body of men go armed and prepared for a fight, and attack the opposite party with intent to enforce their right or supposed right to certain land.

The petitioners numbering from forty to sixty, armed with *lathis*, spears and heavy billets of wood, proceeded to the disputed land, attacked the complainant and his father, and destroyed the crops growing thereon. Both parties claimed the land as having fallen to their shares on partition. The Magistrate found that the complainant was in possession and had grown the crops :—

Held, that the right of private defence did not arise, as there was no invasion of the petitioner's rights on the day of occurrence, and, in any case, that they had ample time to have recourse to the authorities for the protection of their rights.

Where the accused were charged with rioting with intent to dispossess the complainant, but the Appellate Court thought the question of possession not clear and found them guilty of rioting with the intention of enforcing their right or supposed right :—

Held, that both common objects raised the same questions, and that the accused were in no way prejudiced.

THE petitioners, Maniruddin and others, were tried by the Sub-divisional Officer of Habiganj and convicted under s. 148 of the Penal Code. On the 8th March 1907 the accused, from forty to sixty in number, went armed with *lathis*, spears and heavy billets of wood and attacked the complainant, Basir Mahomed, and his father, and destroyed their crops on a certain piece of land.

The complainant claimed the disputed land as having fallen, on partition, to the share of his landlord, while the petitioners alleged that it had fallen to their share. The Magistrate found that the complainant was in possession and had grown the crops,

* Criminal Revision No. 15 of 1908, against the order of J. Phillimore, Sessions Judge of Sylhet, dated Nov. 18, 1907.

and he accordingly convicted the accused. They appealed to the Sessions Judge who held that neither party was in exclusive or undisturbed possession, but the appellants' common object was to enforce the right or supposed right of the petitioner, Sadai Chand and to cultivate the land as a tenant of Maniruddin; and he dismissed the appeal. The petitioners then moved the High Court and obtained the present Rule.

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Babu Sarat Chandra Roy Chowdhry, for the petitioners.

RAMPINI AND SHARFUDDIN JJ. This is a Rule to show cause why the conviction of, and sentences passed on, the three petitioners, *viz.*, Maniruddin, Sadai Chand Saha, and Sheikh Chamari, should not be set aside. The three petitioners have been convicted by the Sub-divisional Magistrate of Habiganj of offences under section 148 of the Penal Code and sentenced Maniruddin to eight months' and the other two to six months' rigorous imprisonment. The petitioner, Maniruddin, has further been convicted of an offence under section 324 of the Penal Code and sentenced to undergo a further term of four months' rigorous imprisonment.

The facts are that the accused on the 8th March last were members of a large body of men, about 40, 50 or 60 in number, who came armed with *lathis*, *bikals* (or spears) and *kuchasals* (apparently heavy billets of wood), and attacked the complainant, Basir Mahomed, and his father Dengu, severely wounded them and destroyed the crops sown by the complainant on a certain piece of land. There had been a partition of certain land of which the disputed plot formed a part. There was a dispute as to the share to which the disputed plot had fallen on partition. The complainant claimed it as having fallen to the share of his landlord. The accused, Maniruddin, raised a similar contention. The Magistrate found that the complainant was in possession and had grown the crops destroyed by the accused. He, therefore, charged the accused with rioting armed with dangerous weapons "with the common object of dispossessing Basir Mahomed from certain land in his possession, and with having used violence in prosecution of that common object."

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The petitioners appealed to the Judge who dismissed their appeal. But he said, "It seems to me that neither party can be said to have been in exclusive or undisturbed possession of the land . . . I find that the appellants' common object was to enforce the right or supposed right of Sadai to cultivate the land as a tenant of Maniruddin, and that they committed rioting."

The Rule was, therefore, applied for and issued on the ground that the Judge had found the accused guilty of rioting with a different common object than that specified in the charge.

In support of the Rule it has been urged (i) that the accused committed no offence, as on the findings of the Judge the petitioners only exercised the right of private defence, (ii) that they have been convicted of rioting with a different common object from that specified in the charge, and (iii) that the two petitioners, Sadai Chand Saha and Sheikh Chamari, took no active part in the riot. They had no weapons and used violence to no one.

As to the first of these pleas, it appears to us that it cannot prevail. In our opinion the accused cannot be said to have been acting in the exercise of the right of private defence. They deliberately went to the land armed with deadly weapons and in very large numbers with intent to enforce their right or supposed right to the land. The witness Dengu says that as the petitioners passed his house on the way to the field Maniruddin said, "Come out *haramjasta*, you and your sons. I am going to the field." This shows the petitioners went to the disputed field deliberately intending to fight, and defied the complainant and his father to come and oppose them. There was no occasion for their going to the field that day. The crop had been previously sown by the complainant and was growing. The petitioners were not suddenly called on to protect their rights or supposed rights. There was no attempt on the day of the occurrence to invade or encroach upon them. In any case, they had plenty time to have recourse to the authorities civil, criminal and police, and deliberately ignored them and took the law into their own hands. In these circumstances, under section 99 of the Penal Code, no right of private defence can have arisen.

The second plea is of a very technical nature. The accused were charged with rioting with intent to dispossess the complainant

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from certain land. The Magistrate found them guilty of rioting with this intent. The Judge thinks the question of possession of the land is not clear, but says that in any case the accused committed an offence under section 148 of the Penal Code, as they committed rioting with the intention of enforcing their rights or supposed rights to the land. The difference between the common object charged by the Magistrate and that held by the Judge to have actuated the accused, is very slight. Both common objects raise the same questions, and the accused have in no way been prejudiced or misled in their defence so as to induce them to omit to bring forward any evidence. They knew very well they were charged with an offence under section 148 of the Penal Code, and that it was advisable for them to establish their claims to the land, in order to justify their proceedings. In fact, they were charged with a more serious, and have been found to have been actuated by a somewhat similar, but less serious, common object.

The petitioners' third plea seems to us not to be correct. There is ample evidence that both Sadai Chand Saha and Chamari carried weapons and took an active part in the riot. Thus Basir Mahomed says: "Chamari beat me on my right leg with a *lathi*. Nobin Chamar, Mansar, Sadai Shaha and Eakub beat me with *lathis* and also my father." Dengu says "Chamari struck me on my left hand with a *lathi*." Biramuddin says, "Chamari beat Dengu." Keda Julla says: "Chamari struck him (Basir) with a *lathi* on the head. Jasud, Sadai Shaha, and Nobin and all the accused beat with *lathis* and pick-axes." Hridoy Mistri and Mohabutulla give similar evidence. There can, we think, be no doubt that the second and third petitioners took an active part in the riot and are not deserving of any leniency.

The Magistrate observes: "Maniruddin is clearly the person who deliberately engineered the riot, and it appears that he has spent most of his life doing this sort of thing, having been imprisoned several times for similar offences. His offence, therefore, requires an extra severe punishment."

We accordingly discharge the Rule.

Rule discharged.