CRIMINAL REVISION.

Before Mr. Justice Mitra and Mr. Justice Caspersz.

JAIRAM MAHTON

v.

EMPEROR.*

1907
July 15.

Rioting—Entry on land in possession of another—Temporary occupation—Unlawful assembly—Private defence, right of—Penal Code (Act XLV of 1860) ss. 99, 101, 104, 147.

The petitioners went with three ploughs on land to which the complainant had the right of possession, and of which he was in possession till such entry, and began to plough up the land, to uproot some castor plants and throw them away. While they were thus in actual but temporary occupation, the complainant and his party went on the land and tried to unyoke the cattle, whereupon a riot took place:—

Held, that the petitioners were not justified in entering on the land, in ploughing it, uprooting the plants and throwing them away, that they were members of an unlawful assembly the common object of which was to enforce a right or supposed right for the exercise of which they were prepared to use force, and that their action in beating the complainant's party was not justified by the fact of their having obtained temporary occupation.

The right of private defence of property is a restricted one.

Ganouri Lal Das v. *Queen-Empress*(1), *Pachkauri* v. *Queen-Empress*(2), *Poresh Nath Sircar* v. *Empror*(3), and *Queen-Empress* v. *Tirakadu*(4) referred to.

The observations of Holloway J. in 7 Mad. H. C. Proceedings(5) cited and approved.

THE petitioners, Jairam Mahton and others, under the alleged title of a *thika* from one of the co-sharers, went upon some land in the village of Yakoobpur Jamasari with three ploughs, and commenced to plough the land, to uproot some castor plants and throw them into the river. The complainant was found to have had the right of possession and to have been in possession prior to

* Criminal Revision No. 682 of 1907, against the order of W. B. Thomson, District Magistrate of Patna, dated May 13, 1907, affirming the order of B. Moitra, Sub-Deputy Magistrate of Bihar, dated April 24, 1904.

(1) (1889) I. L. R. 16 Calc. 206.
(2) (1897) I. L. R. 24 Calc. 686.
(3) (1905) I. L. R. 33 Calc. 295.
(4) (1890) I. L. R. 14 Mad. 126.
(5) (1873) 7 Mad. H. C. Ap. xxxv.

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the entry by the petitioners. He with his party then went on the land and remonstrated and some of them tried to unyoke the cattle, in consequence of which a riot occurred during which the complainant and his brother were hurt.

The petitioners were tried by the Sub-Deputy Magistrate of Bihar who, on the 24th April 1907, convicted them under s. 147 of the Penal Code and sentenced them to six months' rigorous imprisonment and a fine of Rs. 100 each. On appeal to the District Magistrate of Patna the convictions and sentences were upheld.

Mr. Jackson (*Babu Surendra Nath Roy* and *Babu Satyendra Nath Roy* with him), for the petitioners, relied on the facts. The petitioners had obtained a *thika* of the land from one of the co-sharers on the expiry of the complainant's lease. Under the title so given them they entered the land and were in actual possession when the opposite party came and wanted to unyoke the cattle instead of invoking the aid of the authorities. The petitioners were acting in the exercise of the right of self defence : see *Queen* v. *Mitto Sing*(1), *Birjoo Singh* v. *Khub Lal*(2), *Shunkur Singh* v, *Barmuk Mahto*(3).

MITRA AND CASPERSZ JJ. This case has arisen, like most cases under section 147 of the Indian Penal Code, from a dispute as to possession of land. The complainant claimed the land to be his ancestral *rayati* of which he had been continuously in possession for a long series of years. The petitioner, Jairam Mahton, claimed to have possession of the land under a *thika* from the common zemindar, Mahip Narain Singh, who had recently executed a lease in his favour for the land. The complainant was paying rent at the rate of Rs. 24 and odd annas. The petitioner, Jairam Mahton, agreed to pay rent at the rate of Rs. 32 *per annum*. For a few months before the occurrence, the land must have been left uncultivated, and when the season for cultivation and sowing came, the petitioners went there with three

(1) (1865) 3 W. R. (Cr.) 41. (2) (1873) 19 W. R. (Cr.) 66.
(3) (1875) 23 W. R. (Cr.) 25.

ploughs and began to plough the land, and it is said that they uprooted some of the castor plants which they threw into the river. They thus anticipated the complainant, in taking tangible possession, and so were actually in occupation when the complainant's brothers, Kripa and Etwari, came to the land and protested. Kripa and Etwari also tried to unyoke the cattle, whereupon a riot took place on the spot and the complainant and his party were beaten. The hurt caused to Kripa and Etwari was not very serious; but Kripa's right arm and right leg were broken.

The petitioners pleaded in defence to the charge that the lease in favour of the complainant had been executed in the year 1899 and expired in 1906, and as the land was the *khudkasht* or private land of the zemindar, Mahip Narain Singh, he had a right to re-enter upon it on the expiry of the lease given by him to the complainant. The lower Appellate Court has not decided the question whether the land was Mahip Narain's *khudkasht* or not, but it has come to the conclusion, and in our opinion correctly, that the zemindar could not forcibly dispossess the complainant. The complainant must, therefore, be held to have had the right to actual possession, and he was in possession until the petitioner Jairam with his men entered upon the land and began to plough it.

Whether, on these facts, the petitioners could plead *bonâ fide* possession of the land and whether they were justified in resisting the attempt of the complainant and his party to unyoke the cattle are the questions argued before us. That the complainant could prevent Jairam and his party from entering upon the land of which he had been in actual possession, and was in constructive possesison on the date of the occurrence, and that the attempt by Jairam to gain possession was forcible and most unjustifiable cannot be doubted. Even if Jairam had the right to enter upon the land by reason of the tenancy of the complainant having legally terminated, neither the zemindar nor his tenant Jairam could forcibly take possession of the land. They were bound to proceed according to law. The action of Jairam in attempting to plough the land was clearly illegal. But he was, somehow or other, in actual occupation for at any rate a few hours; and

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though the complainant was justified in trying to retain possession and in trying to oust Jairam as the wrong doer for the time being, he also would not have been justified in using force to dispossess Jairam who was in actual occupation. Thus, both sides acted in contravention of the law, complainant in entering upon the land and in trying to unyoke the cattle instead of having recourse to the public authorities, and Jairam in having forcibly entered upon the land, in ploughing it, and in uprooting the castor plants.

Assuming, again, that Jairam and his party had the right of private defence of property, they have not been convicted of the offence of voluntarily causing grievous hurt. The hurt caused to Kripa and Etwari, may, therefore, be deemed to have been simple, and there is no finding that the petitioners used more force than was necessary.

The decision of this case, however, must rest on a consideration of the broad question whether the petitioners were justified in entering upon the land, and ploughing it, and uprooting the castor plants. If they were not justified, they were clearly members of an unlawful assembly, the common object of which was to enforce a right or supposed right for the exercise of which they were prepared to use force.

The authorities on the question are apparently conflicting. But each case must be decided on its own facts; and it is difficult to lay down any general principle regulating all cases of a similar nature but with important shades of difference.

In *Ganouri Lal Das* v. *Queen-Empress*(1), the facts were these. A party consisting of more than five persons went to a spot on a river bank, the river flowing through the land of the defendants, for the purpose of either repairing or erecting a *bund* across it, in order to cause the water to flow down a channel on to the land of the complainant. They arrived at about 10 A.M. and proceeded to work on the *bund* until the afternoon. At about 4 P.M. a large number of men armed with *lathis* and headed by the accused, servants of the principal defendant, went to the spot and attacked the complainant's men who were wounded with *lathis*. It was found that the defendants had the right

(1) (1889) I. L. R. 16 Calc. 206.

to prevent the erection of the *bund;* but, in spite of this finding, they were convicted under section 147 of the Indian Penal Code; and it was held by this Court that the conviction was correct. The Court held that, notwithstanding that the accused had the right to prevent the erection of the *bund,* they were not justified in going in a number and using force when they could easily have gone to the proper authorities for preventing the illegal action of the complainant. Almost all the reported cases on the subject were reviewed in the judgment of this Court, and the learned Judges were of opinion that the right of private defence of property was restricted under the Indian Penal Code, and that "the Code confers the right of private defence not as against mere trespass but as against crime," and that, when there was opportunity to have recourse to the proper authorities, no right of private defence of property existed so as to protect against the perpetration of crime.

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In *Pachkauri* v. *Queen-Empress*(1), the complainant's party were about to take forcible possession of the land of which the accused were in actual possession for the time being. While they were engaged in ploughing, the complainant's party came up and interfered with the ploughing. A fight ensued in the course of which one of the complainant's party was grievously wounded, and he subsequently died, and two of the accused's party were hurt. The Court held that, if the accused were in possession of the land, and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required and in using such force or violence as was necessary to prevent the aggression. In *Poresh Nath Sircar* v. *Emperor*(2), the accused obtained possession in a proceeding under section 145 of the Criminal Procedure Code, and were legally in possession, though, for the time being, the other side had taken forcible possession. The accused attempted to protect their right declared by a competent tribunal, and it was held that they were justified in their action.

It is not necessary to refer to other cases on the subject as we are of opinion that no positive general rule of law applicable to all cases can be gathered from the reported decisions: it is, in

(1) (1897) I. L. R. 24 Calc. 686. (2) (1905) I. L. R. 33 Calc. 295.

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fact, unsafe to attempt to lay down any general rule. The plea which is generally set up in these cases is that the accused had the right of private defence of property. The question of possession thus becomes one of gr-at importance. But possession may mean complete possession, that is, possession during the previous period with a right to possession at the time of the occurrence, and it may only mean actual possession, or mere occupation, immediately before the occurrence.

In a case coming under Chapter VIII of the Indian Penal Code (Offences against the Public Tranquillity), the question as to who was in actual occupation just before the occurrence took place is of paramount importance, and a right to possession, or constructive possession, is not generally of much importance. If a person has the right to possession, and was in law constructiv possession, but was not in actual occupation just before the rence, he may ordinarily have recourse to the proper authoriti the prevention of any wrong to him, and he should not be all to plead the right of private defence of property. The rig private defence of property is a restricted right. Section 99 c Indian Penal Code expressly lays down that there is no rigl private defence in cases in which there is time to have recourse to the protection of the public authorities, and it, also, lays down that the right of private defence in no case extends to doing more harm than is necessary for the purpose of defence. Sections 100 to 105 make the right depend on the circumstances of each case. No man has the right to take the law into his own hands for the protection of his person or property if there is a reasonable opportunity of redress by recourse to the public authorities. Referring to *Hyde* v. *Graham*(1), Holloway J., in *Madras High Court Proceedings, 8th January 1873*(2), says: "The natural tendency of the law of all civilized States is to restrict within constantly narrowing limits the right of self help, and it is certain that no other principle can be safely applied to a country (like this) . . . . ." The right of self help, when it causes, or is likely to cause, damage to the person or property of another person must be restricted, and recourse to public authorities must be insisted on. If a person

(1) (1862) 1 H. & C. 593. (2) (1873) 7 Mad H. C. Ap. xxxv.

prefers to use force in order to protect his property, when he could, for the protection of such property, easily have recourse to the public authorities, his use of force is made punishable by the Indian Penal Code. No matter what the intention of that person may be, the law says that he must not use force in such a case To hold otherwise would be to encourage and put a premium on offences of rioting which are so frequent in this part of India. The country would, in the language of Holloway J., "be deluged with blood," if an offender who could get relief by recourse to law were allowed to take the law into his own hands.

In *Queen-Empress* v. *Tirakadu*(1), Muttusami Ayyar J., speaking of the words "to enforce a right or supposed right" in section 141, said—"It is perfectly immaterial whether the act which one seeks to prevent by the use of criminal force is legal or illegal, the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten the public peace." Redress must be sought in ways other than the use of force by the person who thinks that he has been illegally dispossessed or is entitled to possession of property.

Then, again, assuming that an accused is entitled to plead the right of private defence of property, the exercise of force must be regulated according to the nature of the action which is taken by the opposite side and which requires such an exercise of force. The danger to property may be imminent and incapable of redress if measures are not immediately taken. The law, however, provides that no more force should be used than is necessary. The question in each case, therefore, must be to what extent force may be used, and this is a question of fact.

In the present case, the complainant's right to prevent the ploughing by the accused must, on the findings, be upheld. The petitioners were uprooting the castor plants and throwing them into the river. They were wantonly committing mischief. The counter action of the petitioners in beating the complainant's party could not be justified by the fact of their having obtained temporary occupation.

The petitioners were undoubtedly members of an unlawful assembly. The complainant did not use force of an aggressive

(1) (1890) I. L. R. 14 Mad. 126.

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kind. He attempted to prevent the perpetration of an unlawful act. He might have had recourse to the proper authorities for the prevention of the wrongful act, and redress in other ways, but that was no justification of the conduct of the petitioners, for, even if they had a right to the land, they took the law into their own hands.

We are, therefore, of opinion that the accused have been properly convicted under section 147 of the Indian Penal Code. But, at the same time, we are of opinion that the sentence of six months' rigorous imprisonment, and a fine of one hundred rupees each, is somewhat severe. No lasting injury was done to the complainant's party, though they were hurt. The accused were charged under section 325 of the Indian Penal Code, but that charge was not substantiated. There was an important question of right raised between the parties, and we are, therefore, at liberty to diminish the severity of the punishment upon the petitioners. We affirm the convictions but reduce the sentences of imprisonment from six months to six weeks each, and we reduce the sentences of fine to Rs. 10 each. In default of payment of fine, each of the petitioners is directed to undergo additional rigorous imprisonment for three weeks.

Rule discharged.

E. H. M.