

CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Stephen.

KASI SUNDAR ROY

v.

EMPEROR.*

1904
Feb. 10.

Criminal Procedure Code (Act V of 1898) s. 110 (e)—Abetment—Abetment of the commission of offences involving a breach of the peace—Residence—Jurisdiction.

Held: That where under the orders and with the connivance of the zemindar various acts of oppression are committed, such conduct of the zemindar would bring him within the scope of clause (e) of s. 110, C. P. C.

Held also: That, for the purpose of proceedings under s. 110, C. P. C., a Magistrate has jurisdiction to try a person, who has a residential house and frequently resides for the purpose of his business, within the local limits of the Magistrate's jurisdiction, provided acts of oppression (the subject of the charges under s. 110) are committed, while he so resides.

RULE granted to the petitioners, Kasi Sunder Roy and others.

The petitioner in Revision case No. 970, Kasi Sundar Roy, was a zemindar ordinarily residing at Rampur Boalia in the district of Rajshahye, and the petitioners in Revision case No. 1014 were his servants; Kasi Sundar Roy possessed certain zemindaries situated in the Natore Subdivision of that district, where he also had a residential house. For the purposes of his zemindari he went frequently to Natore and lived in this house. During these visits, he through his servants committed various acts of oppression on his tenants in order to bring the refractory ones to obedience and to compel them to pay enhanced rents. On the complaint of some of them proceedings were drawn up against Kasi Sundar Roy by the Subdivisional Magistrate of Natore under s. 110, C. P. C., and he and some of his men were bound down to keep the peace. They appealed against this order to the

* Criminal Revision, Nos. 970 and 1014 of 1903, against the order passed by Sashi Bhushan Bose, Subdivisional Magistrate of Natore, dated the 30th of July, 1903.

1904
 KASI SUNDAR
 ROY
 v.
 EMPEROR.

District Magistrate, who dismissed the appeal; the petitioners then obtained the present rule, which was discharged.

Mr. K. N. Sen Gupta for the Crown.

The petitioner has been systematically committing various acts of oppression over his tenants in order to make them pay enhanced rents. He commenced his operations at a village called Patal, where the houses of several of his tenants were set fire to and the tenants thereafter agreed to pay enhanced rents. He then took up another of his villages, viz., Dakhinpore, where two arsons were committed and the acts of oppression ceased only after a notice under s. 107, C. P. C., had been served on the petitioner. He then directed his attention towards another of his villages named Basuderpore, where the tenants were oppressed in various ways. This is sufficient to constitute habit under s. 110, C. P. C. There was evidence that the petitioner had a residential house within the jurisdiction of the Magistrate, who initiated these proceedings, and in this house the petitioner occasionally came to live and was actually residing, when these acts of oppression were committed.

Mr. Jackson (Babu Dasarathi Sanyal with him), for the petitioner in Revision case No. 970.

There is no trace of any act of a breach of the peace, there was no opposition on the other side, so there could not have been a likelihood of a breach or an attempt to commit a breach of the peace, nor can it be said to be habitual. It is clear that isolated instances are not evidence of habitual offences. There must be an offence involving a breach of the peace. An unlawful assembly is not a breach of the peace, *Sheo Bhajan Sing v. S. A. Masawi* (1), *Jib Lal Gir v. Jugmohan Gir* (2). The evidence goes to show that there was criminal intimidation and that does not come within s. 110.

The expression "involving a breach of the peace" occurs also in s. 106, and that section would equally apply.

Babu P. C. Roy Chowdhury for the petitioners in Revision case No. 1014 (the servants of Kasi Sundar Sing). Upon the petition there is nothing to show that these men are habitual

(1) (1900) I. L. R. 27 Calc. 983.

(2) (1899) I. L. R. 26 Calc. 576.

criminals. To convict the petitioners it is necessary to find that in the absence of particular acts of violence simple threats amount to habitual offence.

1904
 KASI SUNDAR
 ROY
 v.
 EMPEROR.

GHOSE AND STEPHEN JJ. These rules relate to certain orders made by the Deputy Magistrate of Natore under s. 110, Code of Criminal Procedure, confirmed, as they have been, by the District Magistrate of Rajshahye in appeal. The petitioner in rule No. 970 is one Kasi Sundar Roy, and the petitioners in the other rule No. 1014 are Nilu Pramanik, Sukh Chand Pramanik, Ruplal Pramanik, Basna Pramanik and Kalu Sardar, who are said to be the employees or under-raiyats of the said Kasi Sundar Roy. This person appears to be a zemindar. He owns three villages—Patal, Dakhinpore and Basudebpur—and the case which was made by the complainants, who are some of the tenants of Basudebpur, before the Deputy Magistrate was that various acts of oppression were committed by the petitioners in rule No. 1014 under the orders and connivance of the zemindar Kasi Sundar Roy, the object of such oppression being to compel the *raiyats* to pay enhanced rents. According to the case for the complainants and as it has been found by the lower Courts, the system which Kasi Sundar Roy followed was this:—He would call upon the *raiyats* to pay enhanced rents: if the *raiyats* did not agree to pay such enhanced rents, he would employ *lathials* to go about in the village threatening the *raiyats* with violence and unyoking their ploughs, when engaged in cultivating their lands, and then commit arson in the houses of some of the *raiyats*. It is said that he has been following this system ever since the year 1304 (B.S.) when he commenced such operations through his men upon the village Patal. The Courts below have found that there were two arsons in that village, and the result was that the *raiyats* agreed to pay enhanced rents. The next operation or rather series of operations were upon Dakhinpore, and these operations are said to have been commenced in the year 1306-7. There were arsons in that village, but by reason of certain applications that were made by some of the villagers for the purpose of binding the zemindar down, and by reason of some notice or other having been issued upon him by

1904
 KASI SUNDAR
 ROY
 v.
 EMPEROR.

the Magistrate, the operations were dropped. The third series of operations related to, as it is said, the village Basudebpore, where, according to the finding of the District Magistrate, the chain of events was as follows:—In the year 1308 Chaitra, demands for enhancement of rent were made on behalf of Kasi Sundar Roy, and various *raiyats* were opposed when engaged in sowing their lands. In 1309 Bysakh Kasi Sundar sent for Saroda Prasad Bhattacharjee, one of the complainants, and threatened him with rack and ruin, unless the *raiyats* agreed to pay enhanced rents. In 1309, Assar, cases under s. 145, Code of Criminal Procedure, were instituted in regard to certain lands in the same village, when Kasi Sundar again sent for some of the jotedars; but when the latter arrived, he was not there, and one of his employees, Mohim Bhuyan, held out a threat of arson to Saroda Prasad, Hari and Prangopal. In Pous of the same year, a number of houses in the village Basudebpur were burnt, and this was followed by another conflagration in the same year in the month of Falgun. If the system which Kasi Sundar Roy is said, and is found, to have been following from the year 1304 down to the year 1309 be what we have stated, there can be no doubt that he has been habitually following such line of conduct in order to bring the refractory *raiyats* to obedience, so that they might be compelled to pay him enhanced rents. The question then is, whether his conduct, as has been found by the Courts below, is such as would bring him within the scope of s. 110, Code of Criminal Procedure. There are only two clauses in that section to which reference need be made in this case. Clause (d) says:—“habitually commits mischief, extortion or cheating or counterfeiting coin, currency notes or stamps or attempts so to do,” and the other clause (e) says “habitually commits or attempt to commit or abets the commission of, offences involving a breach of the peace.” Kasi’s conduct could hardly be brought under clause (d), because that clause evidently contemplates cases of people, who do certain things themselves, unlike clause (e) which contemplates cases of persons either doing things themselves or abetting others to do the same. But it is not necessary to draw this distinction in the case before us, because we are of opinion that the conduct of Kasi Sunder, having regard to the evidence in the case, more appropriately falls

under clause (e) than under clause (d) of the section. It seems to us that if the system that he has been following from the year 1304 be as has been found by the Courts below—and we think there is plenty of evidence to support that finding—then he has been abetting other people to commit offences involving a breach of the peace, in order to compel the *raiyats* to pay him enhanced rents. It has, however, been argued before us by the learned Counsel for the petitioner that, looking at s. 110 as a whole, it was never meant to apply to a person in the position of the petitioner, who is a zemindar of considerable means. But upon consideration we are unable to agree with that view of the matter; for, a person may be possessed of zemindaries and of considerable means, yet his desire to acquire more may lead him to follow the course of conduct, which is proved in this case to have been followed by the petitioner; and this would bring him within the scope of clause (e) of s. 110. It has also been argued by the learned Counsel that Kasi Roy is a person over whom the Magistrate (the Subdivisional Officer of Natore) had no jurisdiction to proceed under s. 110, Code of Criminal Procedure. It, however, appears upon the evidence that although he ordinarily resides in the town of Rampur Boalia, he has a residential house in Natore within the jurisdiction of the Subdivisional Officer of Natore; and that he occasionally, if not often, goes there for the purpose of his business as a zemindar in that part of the country; and it appears that all the acts attributed to him are acts which were done by him while residing at his place in Narsatpore. It is those acts of his which occasioned the institution of proceedings against him under s. 110 of the Code. In these circumstances, we think it could not be rightly said that the Subdivisional Officer of Natore had no jurisdiction to take proceedings against him under s. 110. In the result we think that this Rule (No. 970) must be discharged. We order accordingly.

As regards the other Rule (No. 1014), we think that, upon the judgments of the Courts below, and upon the evidence, as has been read to us by the learned Counsel and the learned Vakil on both sides, the order, so far as it affects *Sukh Chand*, *Nilu* and *Kuplal*, must be maintained. But as regards *Basna*, *Parsula* and *Kahu*, the facts disclosed or found are not such as would bring

1904
KASI SUNDAR
ROY
v.
EMPEROR.

1904
 KASISUNDAR
 ROY
 v.
 EMPEROR.

their conduct within the scope of section 110, whether you take clause (d) or clause (e) as applicable to the case. We accordingly hold that the order of the Magistrate must be discharged so far as these three individuals are concerned.

We ought to mention that Parsula's name does not appear in the petition of motion presented to this Court. But the record being before us, and the whole matter having been brought to our notice, we feel no difficulty in making the order that we have made on behalf of that individual as well.

G. M. F.

Before Mr. Justice Ghose and Mr. Justice Stephen.

1904
 Feb. 16

ABINASH CHANDRA ADITYA

v.

ANANDA CHANDRA PAL.*

Penal Code (Act XLV of 1860) ss. 353, 149—Civil Procedure Code (Act XIV of 1882) s. 251—Criminal force by members of an unlawful assembly to deter public servant from discharge of duty.

Section 251 of the Code of Civil Procedure requires the Court to specify in a warrant for execution of decree the day on or before which the warrant must be executed.

A Commissioner attempting to give possession under a time-expired warrant has no authority to go upon land in the possession of the party, who resists the execution.

THE Civil Court appointed a Commissioner under "a parwana" for the ascertainment of mesne profits and under another parwana to deliver possession of the property decreed. The date of the original parwana for the delivery of possession was the 30th March. This parwana was recalled, and by some mistake the date

* Criminal Revision No. 1113 of 1903, against the order passed by S. K. Mullick, Sessions Judge of Tipperah, dated Nov. 28, 1903, modifying the order passed by Raj Narain Banerjee, Deputy Magistrate of Comilla, dated July 31, 1903.