

## CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.

1910  
Dec. 8.

BAJRANGI GOPE

v.

EMPEROR.\*

*Search without warrant—Power of the police to search the house of an absconding offender generally for stolen property on information of dacoity against him—Legality of search—Criminal Procedure Code (Act V of 1898) ss. 94 and 165—Rioting—Common object to resist such search—Right of private defence—Penal Code (Act XLV of 1860) ss. 99, 147, 323, 353.*

Section 165 of the Criminal Procedure Code does not authorize a general search for stolen property in the house of the absconding offender, against whom an information has been laid of having committed a dacoity.

It refers only to specific documents or things which may be the subject of a summons or order under s. 94 of the Code, and the latter does not extend to stolen articles or any incriminating document or thing in the possession of the accused.

*Ishwar Chandra Ghoshal v. Emperor* (1) referred to.

Where a Sub-Inspector, on receiving information of the commission of a dacoity, searched the house of one of the alleged offenders, accompanied by the complainant and the village officers, but without a search warrant, whereupon they were beaten by the petitioners who were charged with, and convicted of, rioting, with the common object of resisting the search, assault and causing hurt, under ss. 147, 323 and 353 of the Penal Code:—

*Held*, that the search was illegal, and that, the common object having failed, the conviction under s. 147 was bad.

The petitioners were tried by the Sub-divisional Officer of Hajipur and convicted, all under s. 147, five under s. 323, and two of the latter under s. 353, of the Penal Code, and sentenced to various terms of imprisonment, on the 5th August 1910. They were also bound down under s. 106 of the Crimi-

\* Criminal Revision, No. 1256 of 1910, against the order of F. W. Ward, Sessions Judge of Mozufferpur, dated Aug. 25, 1910.

(1) (1908) 12 C. W. N. 1016.

nal Procedure Code to keep the peace for two years. On appeal the Sessions Judge of Mozufferpur affirmed the convictions, but modified the sentences.

1910  
BAJRANGI  
GOPE  
v.  
EMPEROR.

The facts were as follows: On the 29th April 1910 Ramphal Singh, a Rajput living in the village of Fatehpore, reported to the Sub-inspector of Raghopur thana that a dacoity had been committed at his house by certain *gowallas* of Rampore, an adjoining village, and that Bajrangi with others had taken away some of the property. A first information was drawn up, and the Sub-inspector went to Rampore in the morning, accompanied by three constables and a duffadar. Ramphal met them a little later with one Damri, and the president and the collecting panchayat arrived shortly after. Sheodhan Singh, one of the constables, was sent to bring the accused and two search witnesses, but returned only with one Bhugwan Bhakat, being unable to find the others. The party then went to the house of Bajrangi, and the Sub-inspector entered it with Ramphal, Sheodhan, Bhakat, and the president and collecting panchayat. They found there only Bajrangi's mother. The open rooms were first searched, and in one of them was found a piece of cloth which Ramphal claimed as his, but which was said by Bhakat to belong to Bajrangi. About this time, on the cry of one of the females, a crowd of *gowallas* assembled outside, and shouts of "mar mar" arose. The Sub-inspector and the others with him were beaten with *lathis* by the petitioners Bajrangi, Mithu, Mahadeo, Raghunandan and Sheolochan. The petitioners were then put on trial and convicted, as stated above.

The common object, as set out in the charge and found, was to resist the execution of a legal process, *viz.*, the search of Bajrangi's house by the police. The defence was that the Sub-inspector acted *malâ fide* in collusion with the Rajputs of Fatehpore, in order to disgrace the *gowallas*, between whom and the former there was enmity.

*Moulvi E. Karim*, for the petitioners.

*The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown.

1910  
 BAJRANGI  
 GOPE  
 v.  
 EMPEROR.

HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling on the District Magistrate of Mozufferpore to show cause why the conviction of, and sentences passed on, the petitioners should not be set aside on the ground that the common object charged failed, and that the search for stolen property without a warrant was not a legal search, and, therefore, the petitioners had a right of private defence. We have heard the learned Deputy Legal Remembrancer showing cause against the Rule, and we are clearly of opinion that section 165 of the Criminal Procedure Code does not authorize a general search for stolen property. It speaks of a specific document or thing which may be the subject of summons or order under section 94, and it is clear that section 94 does not refer to stolen articles or to any incriminating document or thing in the possession of an accused person. The latter proposition has been laid down in the case of *Ishwar Chandra Ghoshal v. Emperor* (1). In this case, however, it is sufficient to hold that section 165 did not authorize a search for stolen property in the house of the absconding offender; and, remarkable as it may appear, there is no other section, admittedly, which would cover such a search. There was no search warrant under section 98 in this case. The search was, therefore, not a legal search, and two, at any rate, of the petitioners who were the part-owners and occupiers of the house had a right of private defence. The common object of the riot, therefore, failed, and the conviction under section 147 was also bad. But we see no reason to disturb the conviction under section 323. There was no justification for calling on the neighbours to beat the police after they had gone out of the hut, and we uphold that part of the conviction. But, as the sentence passed under section 323 was only one of three months' rigorous imprisonment, and we understand that the petitioners have already been four months in jail, the result of our order would be that they would be discharged from custody, unless they are liable to be detained in any other matter. The order under section 106 of the Criminal Procedure Code will be maintained. This

(1) (1908) 12 C. W. N. 1016.

order only affects Bajrangi Gope, Nithu Gope, Sheolochan Gope, Mahadeo Gope and Raghunandan Gope, the other petitioners having been acquitted on the only charges against them; the orders on them under section 106 will of course go with the conviction.

1910  
BAJRANGI  
GOPE  
v.  
EMPEROR.

E. H. M.

*Rule absolute.*

## CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.*

AMANAT SARDAR

v.

NAGENDRA BISWAS.\*

1910  
Dec. 15.

*Appeal—Right of reply—Duty of Appellate Court to determine accomplice character of evidence—Criminal Procedure Code (Act V of 1898), s. 421—Practice.*

The appellant has a right of reply to the Crown on the hearing of an appeal.

*Promoda Bhusan Roy v. Emperor* (1) followed.

The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not, and to weigh their evidence accordingly.

THE accused, a boat manji, was put on trial before Babu Srish Chunder Ghose, Sub-Divisional Officer of Narail, on a charge, under s. 407 of the Penal Code, in respect of some tins of mustard oil alleged to have been entrusted to him by the complainant at the Ultadinghi ghat for carriage to Dumuria, but sold by him at an intermediate station, and convicted and sentenced thereunder, on 10th June 1910, to two years' rigorous imprisonment. He thereupon preferred an appeal

\* Criminal Revision, No. 1355 of 1910, against the order of L. Palit, Sessions Judge of Jessore, dated July 26, 1910.

(1) (1906) 11 C. W. N. xliii.