

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

1912

March 7.

SIVA SUNDARI CHOWDHURANI

v.

EMPEROR.*

Rioting—Test of liability of owner, or person having or claiming an interest in land, for the acts and omissions of an agent or manager—Appointment of attor by the mother, and not by the adopted son—Legality of the conviction of the son—Penal Code (Act XLV of 1860), s. 154.

The criminal liability of a person specified in s. 154 of the Penal Code for the acts or omissions of an agent or manager depends upon the question by whom the latter was appointed. Where, therefore, it was shown that three Hindu *pardanashin* ladies had the management of the estate and were responsible for the appointment of the naib who had fomented the riot, and that their adopted sons had nothing to do with such appointment, though they took some share in the active management of the estate :

Held, that the ladies were alone liable under s. 154.

It is impossible to punish in every case every person who has any interest in the land. The responsibility depends on the fact of the person who caused the riot being himself the person who has an interest in the land, or an agent or a manager of such person, and one of the facts to be proved is whose agent or manager the person fomenting the riot is.

THE petitioners 1 to 3 were *pardanashin* ladies living in a village in the interior of the district of Faridpore, and were the widows, respectively, of three brothers named Mohim Chandra, Rajendra Chandra and Debendra Chandra Roy Chowdhry, who had jointly owned extensive properties in several districts in East Bengal. They were appointed executrices to the estates by their respective husbands, took out probate in due form, and were in possession and had the general

* Criminal Revision, No. 168 of 1912, against the order of A. J. Chotzner, Sessions Judge of Backergunge, dated Nov. 21, 1911.

management of the estates and made the appointments of the officers thereof. The petitioners 4 and 5, and another who was acquitted on appeal, were the adopted sons of the above. The Judge found that under the will of Mohim his widow held his estate for life, but that no such provision was made by the two other brothers, and that their adopted sons, who had attained majority, could have, but had not as a matter of fact, been put in possession of their shares, the management still continuing in the hands of the first three petitioners. There was some evidence that petitioners 4 and 5 actually performed the landlord's duties of settling the tenants' rents and deciding their disputes.

It appeared that, on the 20th May 1910, a riot was committed at Alipura, within the petitioners' zamindari, at the instance of Shashi Chatterjee, a naib of the estate. Four persons were convicted and sentenced therefor, under ss. 147 and 324 of the Penal Code, to one and two months' rigorous imprisonment, respectively, by the Subdivisional Officer of Patuakhali. Their appeals were dismissed by the Sessions Judge of Backergunge on the 25th November 1910, and an application to the High Court in revision met with a similar result. On the 22nd March 1911, the Sub-Inspector of Galachipa made a report to the Subdivisional Officer of Patuakhali recommending proceedings against the present petitioners and the adopted son of the first petitioner, under ss. 154, 155 and 156 of the Penal Code, on account of the previous occurrence. They were put on their trial under ss. 154 and 155 of the Penal Code, and convicted and sentenced thereunder, by the Subdivisional Officer, each to a fine of Rs. 500 for each offence. On appeal, the Sessions Judge of Backergunge acquitted the adopted son of the first petitioner altogether, and set

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aside the convictions and sentences of the others under s. 155 but maintained those under s. 154. The present petitioners thereupon moved the High Court and obtained the present Rule.

Babu Manmatha Nath Mukherjee, for the Crown. Section 154 is very wide, and imposes a liability on every one who has an interest in land. The naib who got up the riot received pay from the estate. Every one who controls or manages the estate is liable. The executrixes had the estate vested in them, and had the power of exercising control over the appointment and removal of the naib, and they are clearly within the section. Any one of the co-sharers would also be liable, even if he had no power of appointment and removal of the naib, provided he was, as in this case, in present possession and was managing the estate.

Mr. K. N. Chaudhuri (with him *Babu Gunada Charan Sen*), for the petitioners. It is not every one having an interest in land who falls within the purview of the section, but only such persons as have control over the management of the property: see *In the matter of Radha Nath Chowdhry* (1). The petitioners 4 and 5 had no such control.

HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling on the District Magistrate of Backergunge to show cause why the conviction and sentence passed on the petitioners should not be set aside, or such other order passed as to this Court may seem fit, on the ground that it is doubtful which of the petitioners, if any, is liable under section 154 of the Indian Penal Code.

Now, the facts are that a certain naib of the estate got up a riot in order to dispossess certain persons by force. Four rioters were convicted: one of them was

(1) (1880) 7 C. L. R. 289.

sentenced to one month and three others to two months' rigorous imprisonment. The first point, therefore, which we have to notice is that this riot appears not to have been in any sense a serious one. There is no doubt, under section 154 of the Indian Penal Code, that the owner or occupier of the land, or any person having or claiming an interest in such land, is punishable with fine not exceeding 1,000 rupees, if he or his agent or manager do not use all lawful means in their power to prevent it, and, in the event of its taking place, do not use all lawful means in their power to disperse or suppress the riot, and if they, knowing or having reason to believe that such an offence is being or has been committed, or is likely to be committed, do not give the earliest notice thereof in their power to the nearest police-station. In this case it is admitted that the ladies themselves did not do or omit to do any of the things which are set out under section 154. It was their agent or naib who got up the riot apparently to promote his own ends, and who did not take any steps to prevent it or give notice to the police-station. The ladies, therefore, in this case, or their adopted sons would be responsible for having appointed such an agent and for not having removed him.

The question, therefore, which arises in this case is as to who was responsible for the management of this estate, and for the appointment of the officers under the estate. It is clearly proved by the general manager, Mr. Savi, that the three ladies, Siva Sundari Chowdhurani and two others, were fully responsible for these appointments; and that, although their adopted sons took some share in the active management of the estate, they are in no way responsible for the appointment of this naib who created this riot. It seems to us impossible to punish in every case

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every person who has any interest in the land. The responsibility must depend upon the fact of the person who caused the riot being himself the person who has an interest in the land, or an agent or manager of such person; and one of the facts to be proved was whose agent or manager the person who fomented the riot is. In this case we cannot trace the appointment of this naib to any one else but the three ladies, and the conviction and sentence, therefore, against the two adopted sons, Dhakhina Ranjan Roy Chowdhury and Ramesh Chandra Roy Chowdhury, must be set aside, and the fine, if paid, must be refunded.

Then, as regards the liability of the ladies, we think that in this case they must be considered to be jointly liable, although, the case being one under the Criminal law, separate sentences have to be passed against each of them; and we think that in all these cases what should be considered is the extent of the responsibility entailed upon the estate by the occurrence, for it would be manifestly inequitable that in a riot between two sets of zamindars, where there are hundred co-owners on one side and one only on the other, that the one man should be fined 100 rupees, and the hundred men should be fined 100 rupees each, which seems to be the principle upon which the present case has been decided. We consider that a fine of 300 rupees would amply meet the justice of this case.

We reduce the sentence on each of the ladies to a fine of 100 rupees each, and in default one month's simple imprisonment. The Rule is so far made absolute, and the balance of the fine, if paid, will be refunded.

E. H. M.