

**CRIMINAL REVISION.***Before Sharfuddin and Richardson JJ.*

1913

*Feb.* 10.

JHULAN SAIN

*v.*

EMPEROR.\*

*Grave-yard—Trespass—Erection of a shed over a visible grave in a disused private grave-yard—Penal Code (Act XLV of 1860), s. 297.*

The erection of a shed over a visible grave belonging to the complainant's family in a disused grave-yard, claimed to be private property of the trespasser, with the knowledge that the feelings of the complainant would be likely to be thereby wounded, is an offence under s. 297 of the Penal Code.

*Per* RICHARDSON, J. The word "trespass" in s. 297 has not the same meaning as "criminal trespass" in s. 441 of the Code, but implies any violent or injurious act committed in the place, and with the knowledge or intent defined in s. 297.

THE facts were as follows. In the suburbs of Backergunge there is a grave-yard which has not been used for burials for about 14 years. The petitioner claimed the land as his own ancestral property, alleging that he was in possession of it and had always enjoyed the fruit of the trees growing thereon. On the 15th July, 1912, he commenced to erect in a corner of the grave-yard a hut, the plinth of which covered the grave of the mother of the complainant. The latter lodged a complaint against the petitioner, under ss. 295 and 297 of the Penal Code, before the Deputy Magistrate of Patna, who, after trial, acquitted him under s. 295, but convicted him, and sentenced him under s. 297, on the 14th September, 1912, to a fine

\* Criminal Revision No. 1637 of 1912 against the order of F. R. Roe, Sessions Judge of Patna, dated Oct. 4, 1912.

of Rs. 51, and in default to one month's simple imprisonment. The petitioner appealed against the order to the Sessions Judge of Patna, who upheld the same by his judgment dated the 4th October, 1912. The petitioner, thereupon, moved the High Court and obtained the present Rule.

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*Babu Surendra Nath Ghosal*, for the petitioner. The grave-yard is a private one and has not been used for the last 14 years. Section 297 does not apply to such a case. The land belongs to the accused, who has always been in undisturbed possession and has enjoyed the fruits of the trees growing on it. His act does not constitute trespass as defined in s. 441 of the Penal Code: see *In re Khaja Mahomed Hamin* (1) and *Mustaffa Rahim v. Motilal Chunital* (2).

SHARFUDDIN J. This was a Rule calling upon the District Magistrate of Patna to show cause why the conviction of the petitioner and the sentence passed upon him should not be set aside on the facts found by the lower Court.

It appears that the petitioner was prosecuted for two offences, namely, one under section 295 and the other under section 297 of the Indian Penal Code. The offence under section 295 related to the petitioner's building a *chabutra*, and thus causing disturbance of the complainant's mother's grave, except as to the small portion known as the minaret. With regard to this offence there has been no conviction, and the petitioner has, therefore, been acquitted. But he has been convicted for the offence under section 297 of the Indian Penal Code. That section runs thus:—"Whoever, with the intention of wounding the feelings of any person, or of insulting the religion

(1) (1881) I. L. R. 3 Mad. 178.

(2) (1909) 2 Ind. Cas. 825.

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of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both." It has been found that this particular piece of land used to be a burial ground about fourteen years ago, and that since then, under the orders of the Municipality, it has not been used for burying purposes. But there are graves still visible on it, and the petitioner has been charged with having commenced to raise a shed over the grave of the complainant's relations, with the knowledge that the feelings of the complainant would be likely to be wounded thereby; and he has been convicted under section 297 of the Indian Penal Code, and sentenced to pay a fine of Rs. 51.

The contentions on behalf of the petitioner are that the land in question is his ancestral land, that it belongs to him and is in his possession, that he is in enjoyment of the fruits of the trees standing upon it, and that the land is no more a burying ground or depository for the remains of the dead, inasmuch as it has not been used for burying purposes for a great many years. In my opinion, however, it is not necessary, for the purposes of section 297 of the Indian Penal Code, that a burial ground should be in use. If it has been a burial ground and if there are visible graves in it, it becomes a depository for the remains of the dead. It is possible that the bodies in those graves may have

disappeared, but the remains of those bodies are still there, although they may have crumbled to dust; and any act of trespass by which the feelings of the relations of the dead are wounded would certainly come under section 297 of the Indian Penal Code. In these circumstances, I am of opinion that the petitioner has been rightly convicted and sentenced, and I would, therefore, discharge the present Rule.

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RICHARDSON J. I agree. It is argued that the word "trespass" in section 297 of the Indian Penal Code has the same meaning as that attached to the expression "criminal trespass" by section 441 of the Indian Penal Code. To that argument I find it difficult to assent. I cannot see how section 441 can be read into section 297 with any intelligible result. The term "trespass" in section 297 appears to mean any violent or injurious act committed in such place and with such knowledge or intention as is defined in that section. It seems to me here that in placing the shed over the grave of the complainant's mother the petitioner has committed a "trespass" which he must have known would be likely to wound the feelings of the complainant, and the other surviving relations of the deceased.

It is said that, at any rate, the petitioner had the possession and custody of the land in which the tomb stood, and that the mere entry upon the land would not, therefore, amount to a trespass. That, no doubt, is so, but what is found here is that the petitioner did more than merely enter upon this land. It is not contended that he had the right to use the land for all purposes as land in its natural state. It is not suggested, for instance, that he could remove the tombs and plough up the whole surface of the land. It is not denied that the place was at one time

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lawfully used as a place of sepulture. So far at any rate as it was so used, it was set apart as a depository for the remains of the dead and is entitled, therefore, to the protection afforded by section 297. With these observations I agree that the Rule should be discharged.

E. H. M.

*Rule discharged.*

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**PRIVY COUNCIL.**

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P.C.<sup>s</sup>  
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BALJNATH RAM GOENKA  
 v.  
 NAND KUMAR SINGH.

**[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]**

*Commissioner, power of—Revenue Commissioner, power to review order made by him annulling sale for arrears of revenue—Act XI of 1859, s. 25, as amended by Bengal Act VII of 1868, s. 2.*

*Held* (affirming the decisions of the Courts in India), that a Revenue Commissioner acting under Act XI of 1859, as amended by Bengal Act VII of 1868, had, under the circumstances, no power to review his order setting aside a sale held for arrears of revenue.

APPEAL from a decree (14th May 1907) of the High Court at Calcutta, which affirmed a decree (28th November 1905) of the Court of the Subordinate Judge of Monghyr.

The defendant was the appellant to His Majesty in Council.

This was an appeal from the decision of the High Court (RAMPINI and SHARFUDDIN JJ.) reported in

\* *Present*: LORD ATKINSON, LORD MOULTON, SIR JOHN EDGE AND MR. AMEER ALI.