

by the second defendant. The second ground, therefore, must prevail.

The result is that this appeal is allowed, the decree of the District Judge set aside and the case remanded to him in order that the appeal may be heard on the merits. The appellants are entitled to their costs in this Court. Under section 13 of the Court-fees Act we direct that the amount of Court fees paid on the memorandum of appeal be returned to the appellants. The plaint, which was returned by order of the District Judge to the plaintiffs, will be received and sent down to the Court below.

O. M.

Appeal allowed ; case remanded.

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BHOLA
NATH ROY
v.
SECRETARY
OF STATE
FOR INDIA.

CRIMINAL REVISION.

Before Sharfuddin and Coxe JJ.

RAM ANGUTHA SINGH

v.

EMPEROR.*

1913

Jan. 3.

Cumulative Sentences—Rioting—Separate sentences for rioting and causing hurt—Penal Code (Act XLV of 1860) ss. 147, 323.

Separate sentences for the offences of rioting and hurt are legal where it is found that each person took an individual part in the assault.

Nilmony Poddar v. Queen-Empress (1), Mohur Mir v. Queen-Empress (2), Ferasat v. Queen-Empress (3) r. ferred to.

THE facts of the case are shortly these. The petitioners are police constables attached to the Cossipore Gun and Shell Factory and the complainant

* Criminal Revision No. 1529 of 1912, against the order of H. P. Duval, Sessions Judge of Alipore, dated Sept. 20, 1912, confirming the order of A. K. M. Abdus Subhan, Deputy Magistrate of Scaldah, dated Aug. 31, 1912.

(1) (1889) I. L. R. 16 Calc. 442. (2) (1889) I. L. R. 16 Calc. 725.

(3) (1891) I. L. R. 19 Calc. 105.

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 RAM
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is the head-constable under whom they worked. It appears that for some time past they had been slack and careless in their duties. They were, therefore, reported against by the complainant and were departmentally punished. The petitioners, thereupon, along with others, conspired together to assault the complainant and did assault him on the 16th of May, 1912, at about 1 A.M. while he was asleep in the guard-room.

The petitioners were put upon their trial before the Deputy Magistrate of Sealdah under sections 147 and 323 of the Indian Penal Code. The learned Deputy Magistrate found them all guilty under section 147 of the Indian Penal Code, and sentenced them to six months' rigorous imprisonment and a fine of Rs. 50 each. In addition to the punishment under section 147, he sentenced the petitioners Nos. 1, 2 and 3 under section 323 of the Indian Penal Code to a further period of three months' rigorous imprisonment.

They appealed to the Sessions Judge of the 24-Pergannahs who dismissed the appeal on the 20th of September, 1912. Against this order of the Sessions Judge they moved the High Court and obtained this Rule.

Babu Manmatha Nath Mookerjee and Babu Sivanandan Roy, for the petitioner.

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

SHARFUDDIN AND COXE JJ. This was a Rule issued to the District Magistrate of the 24-Pergannahs to show cause why the sentences passed, under section 323 of the Indian Penal Code, on the first three petitioners, should not be set aside, on the ground that separate sentences could not be passed against them under both the sections 147 and 323 of the Indian Penal Code.

The three petitioners referred to above have been convicted under section 147 of the Indian Penal Code, and have each been sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 50. They have also been convicted under section 323 of the Indian Penal Code and each sentenced to a further term of three months' rigorous imprisonment. Objection is taken by them that the separate sentences under sections 147 and 323 of the Indian Penal Code are illegal; and reference is made to the Full Bench ruling in the case of *Nilmony Poddar v. The Queen-Empress* (1), where it was held that separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not cause hurt, but were guilty of that offence under section 149 of the Indian Penal Code. In the present case, however, there is a distinct finding that each of the three petitioners took an individual part in the assault. The Full Bench ruling above cited does not, therefore, avail them. There is another case, namely, that of *Mohur Mir v. The Queen-Empress* (2) where it was held that separate terms of imprisonment under sections 147 and 323 of the Indian Penal Code would be legal if the men thus convicted had individually caused hurt. There is another case to the same effect, namely, the case of *Ferasat v. The Queen-Empress* (3) in which also it was held that under the above circumstances separate sentences are legal. In this last case the effect of the case of *Nilmony Poddar v. The Queen-Empress* (1) was explained.

In these circumstances, we are unable to interfere with the separate sentences passed on the first three petitioners; and we accordingly discharge this Rule.

S. K. B.

Rule discharged.

(1) (1889) I. L. R. 16 Calc. 442. (2) (1889) I. L. R. 16 Calc. 725
(3) (1891) I. L. R. 19 Calc. 105.

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