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HARIHAR GURU v. ANANDA MAHANTY.

On application being made by the appellants, this Court, on the 30th August 1912, ordered that the Taxing officer of this Court on its appellate side be at liberty to grant a certificate to the said vakil to enable him to apply to the Revenue authorities to obtain a refund of the said excess court-fee of rupees two-hundred and thirty-five on behalf of his clients, the appellants.

Under the above circumstances, the said appellants, through their said vakil, claim to obtain, and ought to obtain, a refund of the value of the said excess court-fee of Rs. 235 (two hundred and thirty-five only)."

Thereupon, on the 29th January 1913, the Board of Revenue passed the following resolution :—

" Under Note 3 to Rule 35, pages 49-50 of the Stamp Manual, 1911, the Board sanctions the refund of Rs. 235 (rupees two hundred and thirty-five only) less the deduction of one anna in the rupee.

E. W. COLLIN,

Member of the Board of Revenue, Bengal."]

APPELLATE CRIMINAL.

Before Chitty and Richardson JJ.

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Oct. 4.

SAMARUDDI

v.

EMPEROR.*

Jury, trial by—Charge to the jury—Misdirection—Suggestion by the Judge of an alternative aspect of the case not put forward by the prosecution or defence—Omission to point out to the jury, specifically, the evidence against each accused, and minute details—Criminal Procedure Code (Act V of 1898), ss. 297, 303—Rioting—" Violence," meaning of—Penal Code (Act XLV of 1860), ss. 146, 147—Admissibility of evidence of a proceeding to keep the peace as part of the res gestæ.

Where the common object alleged in the charge as framed was to take forcible possession of the complainant's land and hut and to assault him and others named, and the prosecution and defence each asserted exclusive possession and an attack by the opposite party :

* Criminal Appeal, No. 656 of 1912, against the order of G. B. Mumford, Additional Sessions Judge of Dacca, dated June 4, 1912.

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Held, that the Judge was not wrong in asking the jury to consider, as a third alternative, an intermediate state of facts, viz., that the complainant's party went to turn the accused party out of possession, was resisted and driven back, and that the latter then followed after and assaulted the former.

Banga Hadua v. *King-Emperor* (1), *Queen* v. *Sabid Ali* (2) and *Wafadar Khan* v. *Queen-Empress* (3) distinguished.

The word "violence" in s. 146 of the Penal Code is not restricted to force used against persons only, but extends also to force against inanimate objects.

The omission to point out to the jury, specifically, the exact evidence against each accused, is not a misdirection when the Judge has discussed the whole of it and has told them to be satisfied as to the guilt of, and to return an independent verdict against, each accused.

THE appellant, Samaruddi, was tried with four others by the Additional Sessions Judge of Dacca, with a jury, on charges under sections 147, 304 and 149 of the Penal Code, and convicted and sentenced thereunder, on the 4th June 1912, to two years' rigorous imprisonment under each section concurrently.

The facts were as follows. There was a long standing dispute between Pandab Das and one Madhu Mala regarding the possession of certain land and a hut standing thereon, each claiming possession of the same under Purna Babu of Murapara and the Kusumhati Majumdars, respectively. In November 1910 Madhu Mala brought a test case to oust Pandab from the land and hut, and lost it. The Kusumhati landlords then made various attempts, it was alleged, to disturb some of the tenants who had attorned to the rival proprietor. The prosecution case was that, on the 8th January 1912, Pandab was employed in his field, the disputed land, in uprooting mustard plants, with his brothers Joydeb and Chandra Kishore

(1) (1909) 11 C. L. J. 270. (2) (1873) 20 W. R. Cr. 5.
(3) (1894) I. L. R. 21 Calc. 955.

and a labourer named Karam Ali, that Samaruddi, followed at a short distance behind by 30 or 35 sardars, sallied from Madhu Mala's house, that Samaruddi first entered the field and told Pandab to desist from taking the crop, and that on the latter's refusal, he gave his men an order to beat the complainant's party. The complainant and his brothers, it was said, ran away to the house of one Bharat, but Karam Ali was overtaken by seven or eight of the sardars, including two of the accused on trial, and wounded on the head by Daiya Sardar. Karam then stood near Bharat's cowshed and challenged his assailants, whereupon Wajuddi drove his spear into Karam's chest and killed him, while the other sardars stood a little apart and pelted Bharat's house with clods of earth. The defence was that Madhu was in possession, and that the complainant's party went upon the land and was driven out by 12 sardars stationed there to protect her possession.

During the trial Sanu [P. W. 5] deposed that the naib of the Kusumhati Majumdars wanted rent from him, which he refused, as he claimed to hold under Purna Babu, that thereupon he, the witness, was carried to the former's *cutcherry* and forced to promise payment of the same, and that on default he was threatened by some of the accused against whom he was thus compelled to institute proceedings under section 107 of the Criminal Procedure Code, in consequence of which they were bound down, while a similar proceeding brought by them against him shortly before his own case was dismissed.

The charges, as amended by the Judge, stood as follows, the alterations being indicated in italics :—

(1) That you . . . were members of an unlawful assemb'y, and in prosecution of the common object of such assembly, viz. in order to take forcible possession of the complainant Pandab's land and hut, *and to assault*

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Pandab, Joydeb, Chandra Kishore and Karam Ali, you thereby committed rioting under s. 147, I. P. C.

(2) That you . . . were members of the aforesaid unlawful assembly in prosecution of the common object of which, *as stated above*, one of its members, Wajuddi, killed Karam Ali by stabbing him with a spear, *which act you knew to be likely to be committed in prosecution of the above common object*, and that you are guilty under ss. 304 and 149, I. P. C.

The material portions of the charge of the Judge to the jury were as follows:—

Charge read to the Jury.—

Sections 141, 146, 149 and 304 read and explained to jury. Prosecution story recalled to jury.

Pandab, complainant, and one Madhu Mala have been quarrelling over the land in question for some years. In February 1911 Pandab won a case brought against him by Mudhu Mala under sections 143 and 447, I. P. C. for building a hut on the land. Pandab's case is that he has been in possession for many years, and that after building the hut he lived in it.

The Kusumhati Majumdars are said to be trying to assert proprietary rights in the land. They are landlords of Madhu Mala, whose *bari* is close by. Pandab is raiyat of one Purna Babu of Murapara. One morning Pandab and his brothers were uprooting mustard in the land just north of the hut when a crowd of Kusumhati sardars (*lathials*) came up armed with spears, *dabs* and *lathis*. One of this crowd, Samaruddi, accused, is said to have told Pandab that Rebati Babu (one of the Kusumhati Majumdars) had forbidden him to uproot mustard. The other accused also are said to have been members of this crowd. Pandab remonstrated, whereupon Samaruddi said, "seize and beat the *sala*" or words to that effect. Pandab and his brothers ran away, as did their labourer Karam Ali.

The latter was pursued by Wajuddi and others of the *lathials*. When he got as far as the south cowshed of one Bharat Das, he pulled up a bamboo and challenged his pursuers. He appears to have been already struck on the head by one Daiya. Wajuddi then struck him on the chest with the spear and he fell down and died shortly afterwards. Meanwhile the other *lathials* were throwing clods at Bharat's *bari* where Pandab had taken refuge. After Karam Ali fell down, the *lathials* went off south through Madhu Mala's *bari*.

The defence story is that Purna Babu is trying to assert proprietary rights in the land, that Madhu Mala has been in possession for years, that after the case about the hut she was so oppressed by Purna Babu's men that she went to his manager and executed a *kabuliat* in his favour and a

bond in favour of his wife, and that she was since then in peaceful possession of the land until shortly before the present occurrence when the settlement operations began in the neighbourhood. Madhu Mala then told the settlement people that the Kusumhati Majumdars were her real landlords, and not Purna Babu. This enraged the latter's party and they determined to retake possession. To protect Madhu Mala's right, 12 *bideshi* (foreign) sardars were stationed on the land.

Complainant's party came to take possession, and were opposed and worsted by the sardars. In the course of the fight that ensued Karam Ali was struck with a spear. It is claimed that the sardars are protected by Madhu Mala's right of self-defence of property, and that none of the present accused were present at the time. You have to consider which of these two stories is the more probable . . . . .

I would ask you to bear in mind a third alternative, however, and that is that Madhu Mala was in possession, that complaint's party came to turn her out, that they were worsted and driven out of the land by the Kusumhati sardars, that so far these sardars had been acting within their rights, that after complainant's party had been put to flight the sardars intoxicated with success or anger or both determined to teach the complainant's party a lesson, that they, therefore, went after them, that from this moment they became members of an unlawful assembly with the common object of assaulting complainant's party, and that violence was used and Karam Ali was assaulted in prosecution of that common object. To come to a finding on the charge as it stands, you will have to find—(i) who was in possession of the disputed land ; (ii) if the complainant was in possession, whether there was any assembly of five or more persons, each of whom intended that complainant should be forcibly turned out ; (iii) whether any or all of the accused were members of that assembly . . . . . ; (iv) whether force or violence was used in pursuance of the common object shared by accused, presuming that they did share it . . . . . ; (v) whether the force used amounted to an offence . . . . There must be some force or violence in pursuance of the common object to make a riot . . . . Violence may be regarded as force towards inanimate objects. Jury to consider if throwing of clods at Bharat's *bari*, if believed, would amount to violence.

Jury must also consider whether the accused, if they believe they were originally members of an unlawful assembly, were still members thereof when the clods, if any, were thrown, and again when Karam Ali was assaulted, and whether the violence and force alleged to have been used were in pursuance of the common object which they are said to have showed with the other members . . . .

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The charge concluded in these terms :—

"Jury to decide on the facts before them, if any or all of the accused have committed any offence included in the charge. They must come to an independent decision."

The jury convicted Samaruddi unanimously on both heads of charge, but acquitted the other accused. The Judge, agreeing with the verdict, sentenced the former as stated above. Samaruddi appealed to the High Court.

Babu Dasarathi Sanyal and *Babu Debendra Narain Bhattacharjee*, for the appellant.

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

CHITTY AND RICHARDSON JJ. In this case the appellant Samaruddi has been convicted by the unanimous verdict of a jury of offences under sections $\frac{304}{149}$ of the Indian Penal Code and section 147 of the Indian Penal Code, and has been sentenced by the Additional Sessions Judge of Dacca to two years' rigorous imprisonment on each count, the sentences to run concurrently. The appeal is, therefore, open to him only on the questions of law relating to the charge of the Additional Sessions Judge.

The first point that has been urged before us is that the Judge was in error in putting before the jury what he calls "a third alternative." It should be stated that, before the trial began in the Sessions Court, the charge was amended, and, as eventually framed, the common object alleged was "in order to take forcible possession of complainant Pandab's land and hut and to assault Pandab, Joydeb, Chandra Kishore and Karam Ali." The Judge suggested to the jury that the case might not be precisely as the prosecution alleged, and at the same time might not be what the defence endeavoured to set up, but something

between the two, namely, that the complainant's party might have gone to turn Madhu Mala out of possession, that they were resisted and driven out of the land by the Kusumhati sardars, that up to that point the Kusumhati sardars might have been acting within their rights, but that they went further and intoxicated with success or anger or both determined to teach the complainant's party a lesson and assaulted them. Reliance was placed on the case of *Banga Hadua* v. *King-Emperor*(1) and also on the cases of *Queen* v. *Sabid Ali*(2) and *Wafadar Khan* v. *Queen-Empress*(3). But these cases are quite distinguishable on their facts. We can see no reason why the Judge should not have made this suggestion to the jury. He left it entirely open to them as to whether they would accept it or not, and we cannot agree in the contention of the learned pleader for the appellant that, if it was accepted, it would entirely destroy the prosecution case. The Full Bench case of *Queen* v. *Sabid Ali*(2) cited above was quite different from the present, as was also the case of *Wafadar Khan* v. *Queen-Empress*(3). There the charge was altered at the end of the case for the prosecution, and a totally different common object was alleged. Here there has been one common object alleged throughout, and it cannot be suggested that the accused did not know exactly what they had to meet.

In the second place, it is argued that the learned Judge's explanation of section 147 of the Indian Penal Code is faulty, and that "violence" cannot mean violence against inanimate objects. No authority has been cited for such a proposition, and we see no reason for restricting the meaning of the word

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"violence" in the manner stated. It could hardly be said that, if an unlawful assembly came together for the purpose, say, of pulling down a man's house, and they proceeded to carry out the object, they could not be said to have used "violence."

Then it was urged that, as regards the appellant Samaruddi, the Judge did not point out to the jury exactly what the evidence against him was. We do not see that there is any force in this contention. The Judge has discussed the whole of the evidence to the jury, and this man's name is mentioned on more than one occasion. He has told the jury that they must be satisfied as against each of the accused, (there were four others tried along with Samaruddi who were found not guilty), and that their verdict must be independent as against each.

The next argument that the Judge should have asked the jury, when they returned their verdict, as to which common object they had found proved, has no force in this particular case, because only one common object was alleged. In the case of *Wafadar Khan* v. *Queen-Empress*(1) cited above there were two distinct common objects which had been alleged and had been mentioned in the charges. It is said that, in his charge in this case, the Judge has failed to give advice to the jury on most important particulars; but the particulars to which the learned pleader has referred are minor details in the evidence which the jury had heard and which they were asked to take into consideration. It was not, in our opinion, necessary for the Judge to go into the minutest details; but even if it were, there is nothing to show in this case that these particular minor points were not mentioned to the jury inasmuch as we have only the heads of the charge before us.

(1) (1894) I. L. R., 21 Calc. 955.

Then it was argued that the Court witness Hussain Buksh's evidence should have been explained by the Judge. It is difficult to say what precisely is meant by this. The evidence was commented upon by the Judge, and the jury were left to form their own opinion of it.

Lastly, it was argued that evidence which was inadmissible was admitted, and that that prejudiced the accused. This evidence consisted of a statement of the prosecution witness, No. 5 Sanu, who stated that he had brought a case under section 107 of the Criminal Procedure Code against some of the accused, including the appellant, and that they had been bound down, while a cross-case under the same section brought against himself by the accused had been dismissed. This was not, so far as we can see, introduced, as suggested here, for the purpose of proving the bad character of the accused, but as part of the *res gestæ*, the events which had transpired before and which eventually led up to the riot which was investigated in the present case.

We think on the whole that the charge of the learned Sessions Judge was both full and impartial, and that the whole case was fairly put before the jury by him. We accordingly dismiss the appeal.

E. H. M. *Appeal dismissed.*