

are small defects apparently in the story of the prosecution, as there are in all such stories, but the learned Judge has dealt with them in his judgment and his discussion of them and the conclusions that he has arrived at with respect to them appear to us to be reasonable. We, therefore, think that the conviction is right. The sentence is not excessive.

The appeal is accordingly dismissed.

S. K. B.

Appeal dismissed.

1912
 DILAN
 SINGH
 v.
 EMPEROR.

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

HARIHAR GURU

v.

ANANDA MAHANTY.*

1912
 Aug. 30.

Refund of Court-fee—Appeal, over-valuation of—Partial decree—Memorandum of appeal, over-valuation of—Court-fee paid in excess by inadvertence—Practice.

The appellant's agent having, by inadvertence, over-paid court-fee on the memorandum of appeal, the High Court directed the Taxing officer to issue the necessary certificate to enable the appellant to obtain a refund of the excess court-fee from the Revenue authorities.

In the matter of Grant (1) referred to.

THE appellant, in this appeal, having paid an excess court-fee on the memorandum of appeal, applied to the Court for a refund of the amount paid in excess in the following terms:—

“That your petitioner filed on the 24th of June 1912 the above appeal before this Honourable Court against a partial decree amounting to

* Application in Appeal from Original Decree, No. 198 of 1912.

1912
 ———
 HARIHAR
 GURU
 v.
 ANANDA
 MAHANTY.

Rs. 17,961 passed against your petitioner, who was the defendant, by the learned Subordinate Judge of Cuttack.

“That your petitioner’s agent has, on the mistaken idea that an amount of court-fee stamp equal to that paid by the plaintiff on his plaint has to be paid on the memorandum of appeal, although the relief sought in the appeal was Rs. 17,961 only, without consulting your petitioner’s vakil, paid Rs. 950 as court-fee stamp instead of Rs. 715 the *ad valorem* fee on the relief claimed.

“Your petitioner, therefore, prays that upon the circumstances stated above your Lordships will be pleased to order the Collector or the Secretary to the Board of Revenue to refund Rs. 235 to your petitioner, or to pass such other order as to your Lordships may seem fit and proper.”

Babu Surendra Madhab Mullick, for the petitioner.

MOOKERJEE AND BEACHCROFT JJ. The valuation of this appeal will be considered as Rs. 17,961; the sum of Rs. 235 has, therefore, been overpaid as court-fees; let the Taxing officer issue the necessary certificate to enable the appellant to apply to the Revenue authorities to obtain a refund of the excess court-fee. We make this order on the authority of the case of *In the matter of Grant* (1)*

(1) (1870) 14 W. R. 47.

* [In accordance with the above order, the Deputy Registrar of the High Court, for the Taxing officer, issued the following certificate to the Board of Revenue, Bengal, on the 27th September 1912 :—

“It appears that the memorandum of the above appeal was filed in this Court by the vakil for the abovenamed appellants on two court-fee stamp papers denoting rupees nine hundred and fifty in all, *i.e.*, one paper of the value of rupees nine hundred and the other of the value of rupees fifty.

The value of the appeal, however, is rupees seventeen thousand nine hundred and sixty-one, and the *ad valorem* court-fee payable on the memorandum of appeal is, therefore, rupees seven hundred and fifteen only. The excess court-fee of rupees two hundred and thirty-five was paid by inadvertence.

The said court-fee stamp papers of rupees nine-hundred and fifty have been punched and cancelled, and they cannot be produced with this certificate, inasmuch as they continue affixed on the said memorandum of appeal which is filed of record in this Court.

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.

SAMARUDDI

v.

EMPEROR.*

1912

Oct. 4.

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.