

Dharamdeo Singh and ors. Vs. Emperor

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Court : Allahabad

Decided On : May-31-1916

Reported in : AIR1916All49; 35Ind.Cas.978

Judge : Walsh, J.

Appellant : Dharamdeo Singh and ors.

Respondent : Emperor

Judgement :

Walsh, J.

1. In this case I see no ground for interference. It is another of those unfortunate agricultural disputes which are only too frequent. The applicants were cutting either properly or improperly, probably improperly, a sugar-cane crop, and the men who apparently had the right to interfere, or at any rate claimed the right to interfere, called upon them to stop. They might have stopped or they might have remonstrated, but they did a great deal more. They attacked them with lathis and inflicted in one case grievous hurt and in another case simple hurt. There was a considerable volume of evidence of eye-witnesses which the Magistrate has accepted. It is a clear case of unlawful assembly attended by force and violence amounting to riot under Section 147 of the Indian Penal Code. If all the parties had been sentenced to six months' rigorous imprisonment, nobody could have said that 'they were too severely punished. They were, however, sentenced to four

months' rigorous imprisonment under Section 147 of the Indian Penal Code. They were further convicted of the offence of inflicting grievous hurt and sentenced to two months' rigorous imprisonment under Section 325 of the Indian Penal Code. There was no direct evidence against any of them for this act. They merely became liable for the grievous hurt under Section 149 of the Indian Penal Code, which makes all the participants in an assembly of this kind responsible for what is done. An ingenious argument supported by authority, deserving of all respect, has been addressed to me, by Mr. Dube on behalf of the applicants, that these separate convictions ought to be set aside on the ground that separate convictions and sentences for additional matters like grievous hurt resulting from the riot cannot stand as there has been conviction for riot. It must be conceded, however, that if there is direct evidence against any member of the assembly of his having committed grievous hurt, he may be convicted upon such evidence and punished. The argument is based upon the fact that in the absence of direct evidence such a person can only be convicted through the medium of Section 149 of the Indian Penal Code, that is to say, his mere membership of the assembly, and it is argued from that, that Section 149 is part of the offence of grievous hurt under Section 325. Reliance is placed upon Mr. Justice Straight's decision in *Queen-Empress v. Ram Partab* 6 A. 121. In the first place, I do not think that Section 149 is rightly described as part of the offence under Section 325. It is a definition of the offence itself. A man becomes guilty of the offence, according to a well-recognised principle of common law, because he is a member of the party that commits the offence. In the second place, I think that the reasoning of Mr. Justice Straight in *Queen-Empress v. Ram Partab* 6 A. 121 although sound as far as it went, did not go far enough and failed to give effect to the whole meaning of Section 71 of the Indian Penal Code. The latest decision of this Court in *Queen-Empress v. Bisheshar* 9 A. 645 in which the judgment was delivered by Sir John Edge, must, I think, be taken as having settled this matter, so far as this Court is concerned, beyond controversy. The real solution of the question is that whether there are different definitions of the same offence or whether the same offence is provided for in different sections or by separate and different provisions in the Code, care should be taken that under no circumstance should the accused be sentenced to a greater punishment than the highest penalty contained in one of the provisions

under which he may be convicted. He may be convicted of rioting and also of causing grievous hurt by mere membership of an unlawful assembly, provided the sentence ultimately passed on him does not exceed that provided in Section 325 of the Indian Penal Code. This view of the law must be taken to be now clearly established by the authority of this Court. The convictions are, therefore, lawful. I do not think the applicants have any ground for complaint that the sentences are too severe. The sentences of four and two months' rigorous imprisonment to run consecutively must be upheld. The applicants must surrender themselves to bail in order to serve the remaining term of imprisonment.

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