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Court : Allahabad

Decided On : Nov-04-1925

Reported in : 92Ind.Cas.463

Judge : Sulaiman, J.

Appellant : Chhidda and ors.

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a criminal revision from convictions of the applicants under Section 147 and Section 323 read with Section 149 of the Indian Penal Code and sentences or imprisonment and fines. The learned Sessions Judge on appeal has reduced the sentence so as to make the sentences or imprisonment under the two sections concurrent.

2. It appears that the complainant Sri Ram who had obtained a decree against Tarsia and his son Loka applied for attachment of the property of his judgment-debtors, and in the company of a Commissioner, appointed by the Court went to the village to get the attachment effected. Naubat one of the applicants, first tried to prevent the attachment on the ground that the cattle sought to be attached did not belong to the judgment-debtors but were his own property. The Commissioner,

however, warned him that if he interfered he might come to grief. After some consultation Naubat did not prevent the Commissioner from attaching the cattle. But as soon as the attachment had been made and before the Commissioner left the place the accused Naubat along with the other accused persons came out armed with lathis and raided the complainant Sri Kara. The complainant ran to the Commissioner who was only at a distance of some 10 yards from the house of the accused and requested him to protect him. The Commissioner, seeing the attitude of the accused, felt himself helpless to intervene at that stage. The assailants pursued the complainant Sri Ram for some distance, overtook him, attacked him and his brother Behari, and felled them down on the ground. Sri Ram received simple hurts with lathis. Both the Courts have accepted this story of the prosecution and have rejected the defence story, that the injuries were caused in self-defence. According to the medical evidence a large number of injuries were caused to the complainant and his brother though all of them were simple in their nature.

3. The main contention on behalf of the applicants is that their convictions under two separate sections of the Penal Code are illegal. The contention is that inasmuch as the act of rioting and of causing injuries to Sri Ram and his party was a part and parcel of one and the same event there should not be separate and distinct convictions and sentences. The learned Vakil for the applicants relied on the cases of the Lahore, the Calcutta and the Madras High Courts in support of his contention, but later on had to concede that some cases of this Court are against him. It is unnecessary for me to refer to the various cases of the other High Courts and point out the differences of opinion. But I may note that a Full Bench of the Bombay High Court has taken a different view and held that separate convictions under Sections 147 and 323 are not illegal, vide the case of *Queen-Empress v. Bana Punja* 17 B. 260 : 9 Ind. Dec. (N.S.) 170.

4. It is true that in the case of *Empress v. Ram Partab* 6 A. 121 : A.W.N. (1883) 241 : 3 Ind. Dec. (N.S.) 727 Straight, J., expressed the view that a member of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt. This case was distinguished in the Full Bench case of *Queen-*

Empress v. Ram Sarup 7 A. 757 : A.W.N. (1885) 195 : 4 Ind. Dec. (N.S.) 885. The latter case, however, is not directly in point because it was found there as a fact that the accused persons had besides taking part in the unlawful assembly committed individual acts of violence with their own hands. But the question was considered by a Divisional Bench of this Court in the case of Queen-Empress v. Bisheshar 9 A. 645 : A.W.N. (1887) 149 : 5 Ind. Dec. (N.S.) 867 and Edge, C.J., came to the conclusion that separate convictions under Sections 147 and 323 read with Section 149 were not illegal and that all that was necessary was to make' sure that the provisions of Section 71 of the Indian Penal Code were not contravened. A similarview has been expressed recently by a single Judge of this Court in the case of Dharamdeo Singh v. Emperor 35 Ind. Cas. 978 : 14 A.L.J. 738 : 17 Cr. L.J. 418.

5. There can be no doubt that Section 149 creates no substantive offence in itself. It is merely declaratory of the law and makes a person who has been a member of an unlawful assembly liable for the offences committed by any other member of it. But Section 147 is a substantive offence in itself and makes a person guilty of the offence of rioting as distinct from actually causing any injury or hurt. Similarly Section 323 is a distinct offence in itself. It would, therefore, seem obvious that there is nothing illegal in convicting a person of offences under both these sections. Some of the High Courts which have taken a contrary view have proceeded on the ground that so long as the hurt is not actually caused the offence of rioting does not come into existence. That argument may have some force in cases where only one hurt has been inflicted; but where several injuries have been caused and particularly on several individuals the rule is obviously inapplicable. As soon as the first injury was caused to any person, force was used and the offence of rioting was complete. Subsequent injuries though inflicted in pursuance of the same common object would be distinct injuries justifying a conviction under Section 323.

6. In the present case, had I been of opinion that the sentences passed were severe, I might have remitted the fine in at least one case, but the facts stated above show that the accused adopted an aggressive attitude and were wholly in the wrong, and they pursued and attacked the complainant decree-holder in the

presence of the Commissioner and inflicted several injuries on him and his party. I, therefore, decline to interfere with the sentence. The application is accordingly dismissed.

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