SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Brae Vs. the Queen-empress

Brae Vs. the Queen-empress

SooperKanoon Citation : sooperkanoon.com/868670

Court : Kolkata

Decided On : Sep-22-1883

Reported in : (1884)ILR10Cal338

Judge : Mitter and ;Pigot, JJ.

Appellant : Brae

Respondent : The Queen-empress

Judgement :

Mitter, J.

1. The appellant in this case has been convicted by the Sub-Divisional Magistrate of Jhenidah under Section 155 of the Indian Penal Code. It is quite clear, and it is not disputed that that is not the right section under which he should have been convicted. The appellant was simply the manager and not the owner of the land respecting which the alleged riot took place. The section under which he should have been charged is Section 156, but it appears to me that on three essential points the evidence that has been adduced is not sufficient to establish an offence under Section 156.

2. The first point that is necessary to be established is that a riot was committed, but there is no evidence to prove that a riot, as defined in the Penal Code, was committed. It is necessary to show that there was an assembly of more than five

persons, who had a common object in view, but in this case there is no evidence to show that the servants of the factory, who are alleged, to have constituted the unlawful assembly, had any such common object. It is said that their object was to prevent the indigo plants being uprooted, but no evidence of this has been adduced on behalf of the prosecution. Therefore, there is no legal evidence to establish that a riot was committed.

3. The second point upon which evidence for the prosecution is wanting is that it is not shown, supposing' that a riot was committed, that it was committed for the benefit or on behalf of the person who was the owner or occupier of the land respecting which such riot took place. If the common object was to prevent the indigo plants being uprooted, then in that case no doubt it could have been reasonably inferred that the riot was committed for the benefit or on behalf of the owner of the land, but that being not established, it follows that it is not shown that the riot, if it was committed, was committed for the benefit or on behalf of the owner or occupier of the land.

4. The third point is that it is not shown that the appellant before us had reason to believe that any riot was likely to be committed. No doubt this fact can very seldom be established by direct evidence, but there must be circumstances from which it may be reasonably inferred. In this case the only circumstances that have been established are, that Mr. Brae was in the factory at the time that the alleged riot took place, and that amongst the rioters were some servants of the factory; but these facts are not sufficient to give rise to the inference that before the riot took place--if any riot at all took place--the appellant had reason to believe that it was likely to take place.

5. Upon all these three points it seems to me that the evidence is not sufficient. Therefore the conviction and sentence will be set aside, and the fine, if realized, will be refunded.

Pigot, J.

6. I entirely agree. I would only add that in applying the sections which give the Magistracy powers of such startling magnitude, it is, in my opinion, incumbent

upon those entrusted with the exercise of such powers to act not upon inferences or suspicions but upon evidence. Whatever may have been the object of the Legislature, whether as explained by the learned Counsel for the prosecution or not, whatever may have been the occasion of the insertion in the Code of these most formidable sections, we must hold that the law thereby enacted is not intended to be applied upon surmise but upon proof.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com