

Behari Mahton Vs. Queen-empress

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Court : Kolkata

Decided On : Dec-16-1884

Reported in : (1885)ILR11Cal106

Judge : Mitter and ;Norris, JJ.

Appellant : Behari Mahton

Respondent : Queen-empress

Judgement :

Mitter and Norris, JJ.

1. We are of opinion that the two first charges are not sufficiently explicit, and that they should have contained such particulars of the manner in which the alleged offence was committed as would have been sufficient to give the accused notice of the matter with which he was charged.

2. The foundation of both charges lay in the fact that the accused was alleged to have been a member of an unlawful assembly. 'An unlawful assembly' is defined by Section 141 of the Indian Penal Code, and the alleged common object of the assembly ought to have been set out in the charges. An accused person is entitled to know with certainty and accuracy the exact value of the charge brought against him. Unless he has this knowledge he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to

implicate an accused person for acts not committed by himself, but by others with whom he was in company.

3. The Sessions Judge appears to have recognised the insufficiency of these charges, for he framed the new charges (Nos. 3 and 4) [here followed in extenso charges 3 and 4 as set out above.]

4. The Jury unanimously acquitted the accused on the first charge and on the first amended charge (1 and 3). As far as we can gather from the record, which is almost illegible, and which we have almost been constrained to return to be fair copied, they have returned no verdict on the second charge; nor does the Sessions Judge appear to have directed their attention to that charge in his summing up. We are, however, satisfied that even if the second charge had been properly framed, there was no evidence upon which the accused could have been convicted of murder. The Jury, however, convicted the accused on the second amended charge (charge No. 4).

5. We have now to consider whether, looking at the form of the charge and considering the Judge's summing up, the conviction can be supported, for we can only set it aside upon some error in law.

6. We are of opinion that the charge as framed discloses no offence.

7. The common object of the unlawful assembly as laid in the charge was 'to resist the theft of crops by violence.' There is no punctuation in the charge as set out in the record, but we imagine that what was meant to be charged as the common object was 'the resisting, by violence, the theft of crops.'

8. Now, it is clear that under Section 96 of the Indian Penal Code the accused was justified in using violence for the protection of his own crops or those of any other persons, provided that, in the exercise of such right, he did not inflict more harm than it was necessary to inflict for the purpose of such protection.

9. The charge, to have disclosed an offence, should have alleged the common object to have been 'to unlawfully resist by violence the theft of crops,' or, still better, 'to defend certain immoveable property, to wit, growing crops against the

offence of theft, and, in such defence, to inflict more harm than was necessary for the purpose of such defence.'

10. The case for the prosecution was that unnecessary violence had been used by members of the assembly other than the accused, for which he became responsible by virtue of Section 149 of the Indian Penal Code; this should have been distinctly alleged. We have carefully perused the Judge's summing up, and it appears to us to be deficient in this respect, in that he has not directed the Jury to consider what, if any, was the common object of the assembly before the assault was committed; nor has he told them that if the assault was committed in the absence of the accused, they must be satisfied that it was committed in pursuance of a common object which would make the assembly 'unlawful' within the meaning of Section 149 of the Indian Penal Code. We are, therefore, constrained to set aside the conviction. Under the circumstances we think no good result would follow from our directing a new trial, and we accordingly direct that the accused be discharged from custody.

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