

Laskari and ors. Vs. Emperor

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Court : Kolkata

Decided On : May-12-1909

Reported in : 4Ind.Cas.1

Judge : Caspersz and ;Ryves, JJ.

Appellant : Laskari and ors.

Respondent : Emperor

Judgement :

1. This was a rule on the District Magistrate to show cause why the conviction and sentences passed upon the petitioners should not be set aside, or revised, on the ground that the joint trial on various charges was illegal, It is unnecessary to consider the second branch of the rule, as we are of opinion that, on the first part of this rule, it must be made absolute.

2. Cause is shown by the learned junior Government pleader, and the Magistrate has no further cause to show in the case.

3. The petitioners have been convicted and sentenced to various terms of imprisonment in respect of a disturbance (in two parts) arising out of the execution of a decree against the petitioner, Padu. Padu, however, was not charged, or prosecuted, in respect of the second part of the disturbance. The facts, as found by the Sessions Judge, are mentioned in his judgment. They are shortly these: That after the Civil Court peons had been obstructed in executing the decree, the

rioters, after consultation, and at the instance of Laskari and Kokalal, two of the petitioners before us, proceeded to the kutchery of the decree-holder in order to beat his son and the tahsildar, Mohamed Vakil. They suited their action to the word, and some of them, not including Padu and Darogi, the latter having been acquitted, went to the kutchery whence, after beating the decree-holder, they brought out the tahsildar, Mohamed Vakil, whom they, took to the house of the judgment-debtor, Padu, and violently assaulted him there and left him for dead. We have mentioned that Padu was not charged in respect of the second part of the occurrence, namely, the beating of Mohamed Vakil, and it is also in evidence that the common objects charged against the petitioners were different in respect of the two separate occurrences.

4. Now, can it be said that there was one and the same transaction in the course of which the several offences were committed? If not, than, clearly, the joint trial was illegal. The test in a case of this kind has been elaborated in the Bombay case *Umed Dholchand v. Vir Saheb Jiva Miya* 7 B. 134 at p. 135 to which the Sessions Judge has referred. But we do not think that it can be said, in the present case, that all the rioters gathered together for the same purpose, or that there was any continuity in their ideas or methods. The second attack was clearly the result of an after-thought and there was then no further intention to obstruct the execution of the decree in the course of which the incidents of the first occurrence took place. The mere fact that all the persons accused were not engaged, or implicated, in the second occurrence, and that the common object charged in respect of that second occurrence was different, appears to distinguish the nature of this case from the case on which the Sessions Judge relies.

5. We are constrained, therefore, to make this rule absolute and to direct a re-trial of the accused persons, the present petitioners, each occurrence forming the subject-matter of a separate trial.

6. The petitioner, Padu, will be now discharged from bail on which he was released, and the other accused persons will be set at liberty. The District Magistrate is directed to take steps to have all the petitioners committed to the Court of Sessions for trial in accordance with the observations we have made.

