

**Harendra Barman Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/880673](http://sooperkanoon.com/880673)

**Court :** Kolkata

**Decided On :** Nov-21-1930

**Reported in :** AIR1931Cal606

**Appellant :** Harendra Barman

**Respondent :** Emperor

**Judgement :**

**Lort-Williams, J.**

1. In this appeal the learned Counsel for the appellants has raised only the question of sentence. The accused appellants who were nine in number were convicted and sentenced as follows: Accused 1 was sentenced to undergo rigorous imprisonment for three months and six months respectively under Section 147 and Section 325 read with Section 149. These sentences were to run concurrently. Accused 2 to 4 were sentenced each to one year and six years respectively under Section 147 and Section 325 read with Section 149, I. P.C. These sentences were to run consecutively. Accused 5 to 9 were sentenced each to one year under Section 147 and six years under Section 325, I. P.C. These sentences were to run consecutively. The learned Counsel's first point is that under Section 71, I. P.C., it is not legal to pass a separate sentence where the accused is charged both under Section 147 and also under Section 325 read with Section 149. He relies upon the cases of Nilmony Poddar v. Queen-Empress

[1889] 16 Cal. 442 (F.B.), Kianuddi Karikar v. Emperor : AIR1924 Cal771 and Bajo Singh v. Emperor A.I.R. 1929 Pat. 263. The learned Counsel for the Crown argued that these cases were no longer to be followed because of the amendment to Section 35, Criminal P.C., made in 1923. The points raised in this appeal and in all these cases and also the argument based upon the 1923 amendment were all dealt with in *Kitabdi v. Emperor* : AIR1931 Cal450 in which it was decided that the amendment of Section 35 had not affected the points dealt with in the cases to which I have referred. The first of these cases being a decision of the Full Bench is binding upon this Court although I personally have some doubt whether the decision is correct which doubt seems to have been shared to some extent by the learned Chief Justice in the appeal case which I have mentioned. The position therefore is that in view of those decisions we must set aside the sentences passed upon accused 1 under Section 147 and upon accused 2 to 4 under the same section. Further, we are of opinion that some difference ought to be made between the sentences imposed on accused 2 to 4 and accused 5 to 9. It is clear that accused 5 to 9 inflicted the blows which caused the death of the murdered man. Accused 2 to 4 were members of an unlawful assembly and attacked other members of the complainant's party, but did not take any part in the actual attack on the murdered man.

2. For these reasons we think that the sentence passed under Section 325 read with Section 149 should be reduced from six years to five years, the result being that No. 1 is sentenced to six months under Section 325 read with Section 149, I. P.C., and Nos. 2 to 4 to five years under the same sections, and Nos. 5 to 9 to one year under Section 147 and six years under Section 325 I. P.C.

**S.K. Ghose, J.**

3. I agree.