

**(1898) 11 CAL CK 0001**

**Calcutta High Court**

**Case No:** No. 709 of 1898

Ramdihal

APPELLANT

Vs

Empress

RESPONDENT

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**Date of Decision:** Nov. 2, 1898

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### **Judgement**

1. The Petitioners before us have been convicted of rioting, the common objects being to overawe the head constable of police in the lawful exercise of his lawful duties, and to use criminal force to that head constable and to certain other public servants, viz., constables and ehawkidars, in the execution of their duty as such. Each of the Petitioners has been convicted separately,--first, under sec. 147; secondly, under sec. 353; and thirdly, under sec. 853 read with sec. 149, Indian Penal Code. The Petitioner, Ramdihal, has been sentenced to two years' rigorous imprisonment under sec. 147, and to a further term of one year's rigorous imprisonment under sec. 353, and under the latter section read with sec. 149. The Petitioner, Supha Ahir, has been sentenced to a year's rigorous imprisonment under sec. 147, to six months' rigorous imprisonment under sec. 353, and a further six months' rigorous imprisonment under sec. 353 read with sec. 149. We think that these cumulative sentences are illegal. The force which was used and formed one of the component elements of the offence of rioting was the criminal force used to the public servants in the execution of their duty, and to sentence the Petitioners separately under sec. 147, and under sec. 353 is in fact to punish them twice for the same offence. The further sentencing of the Petitioner, Supha Ahir, under sec. 353 read with sec. 149 was obviously altogether illegal, for he was punished, first, for actually committing an offence under sec. 353, and again for committing the same offence constructively. We set aside the sentences passed on each of the Petitioners under sec. 353, and under sec. 353 read with sec. 149, Indian Penal Code, and affirm the sentences passed upon them respectively under sec. 147 of the Code. E. H. M.