(1914) 06 CAL CK 0038

Calcutta High Court

Case No: Rev. No. 681 of 1914

Har Naran Sardar and Others	APPELLANT
Vs	
The Emperor	RESPONDENT

Date of Decision: June 5, 1914

Judgement

1. In this case it appears that on the 9th of December last, the day of the Mahurrum there was a collision between two Mahurrum processions or between those processions or one or other of them and the Police officers on duty at the time and place in question. Of the Mahurrum parties one was composed of the employees of the Budge-Budge Jute Mill and one, spoken of as the Katki Dal, of the employees of an oil depot. In the occurrence it would seem that four of the Police officers and three members of the Katki Dal were injured. The nine Petitioners before us and some others were therefore placed on their trial before the Joint Magistrate of Alipur Having heard the witnesses for the prosecution, the Joint Magistrate framed against the accused a charge of rioting, and in the charge so framed, it was stated that the common object of the unlawful assembly, which has culminated in the riot, was to assault the Police. No charges were framed under sec. 353 or sec. 323 of the Code. Why this was not done does not appear from the record. It may be that the Joint Magistrate thought it unnecessary to ascertain which of the accused before him, if any, were responsible for specific injuries. In the result the Joint Magistrate convicted the nine Petitioners (and one other accused with whom we are not now concerned) and sentenced them under sec. 147 of the Code to various terms of imprisonment.
2. On appeal, the Additional Sessions Judge of Alipur came to the conclusion that the attack made by the mill employees was made not upon the Police, but upon the members of the Katki Dal, and that the injuries suffered by some of the officers were sustained in their endeavour to separate the two Mahurrum parties.

3. Finding, therefore, that the Petitioners were not actuated by any common design to assault "the Police," that the injuries caused represented the independent acts of

individuals and that in respect of any such injury only the person inflicting it could be made responsible, the Sessions Judge held that the charges framed by the Joint Magistrate failed and therefore acquitted the Petitioners of the offence of rioting.

4. When from the evidence on the record the Sessions Judge deduced, as he appears to have deduced, that the common object of the Petitioners and their companions was to assault the members of the Katki Dal, and when he also found that in the attack thus made upon that party some of its members were injured, whether upon these findings if the Sessions Judge had been able further to hold that by the error or omission in the statement of the common object as set out in the charge, the Petitioners had been in no way prejudiced or misled, the Sessions Judge should or should not have affirmed the convictions is a matter we need not now discuss.

5. Having acquitted the Petitioners of the offence of rioting the Sessions Judge next proceeded to convict the Petitioners each of an offence under sec. 353 of the Code in respect of the assault committed upon the several Police officers. Here the Sessions Judge has fallen into manifest error. The Petitioners had not been called upon to answer to any such charge and it cannot be said that they have not been prejudiced, for the judgment of the Joint Magistrate appears to show that in his opinion in the case of some, if not all of the Petitioners, the evidence going to show that they had individually inflicted specific injuries, though sufficient to establish general activity in the riot, was not sufficient to prove the commission of the definite act alleged.

6. Moreover, in convicting the Petitioners of an assault or assaults upon the Police, the Sessions Judge has not found which Police officer was assaulted by which Petitioner though in the view taken by him of the case such a finding was essential. We therefore set aside the conviction of and the sentences imposed upon the Petitioners under sec. 353 of the Code. But having regard to the finding arrived at by both Courts, and having heard learned Counsel for the Petitioners on this point as on other points, we think that in this case our proper course is to set aside also the acquittal of the Petitioners under sec. 147, and to direct that they be re-tried on charges properly framed under secs. 147, 353, 323 and any other appropriate section of the Penal Code. We order accordingly.