

(1922) 11 CAL CK 0016

Calcutta High Court

Case No: Cr. Revn. No. 925 of 1922

Sarat Chandra Ghose and others

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision: Nov. 28, 1922

Judgement

1. This rule was granted only on the ground that the separate sentences passed on the petitioners were illegal. They were convicted of offences punishable under Ss. 147 and 225, I.P.C. and sentenced to three months rigorous imprisonment on each count, the sentences to run consecutively. In the charge of rioting punishable under S. 147, I.P.C., the common object of the unlawful assembly is set out to resist the execution of the law by forcibly rescuing a prisoner (accused), Lalu Kaviraj, from the lawful custody of two constables Harun Rashid and Srimanta Bera. In the second charge of an offence punishable under S. 225, I.P.C. the words used to describe the offence are intentionally rescued or attempted to rescue a prisoner, Lalu Kaviraj, from the lawful custody of constables Harun Rashid and Srimanta Bera. It might be argued that rioters, being members of unlawful assembly with the common object of committing an offence and the actual commission of that offence are separate and distinct offences. But even accepting this contention we must hold having regard to the provisions of S. 71 of the Indian Penal Code and S. 35 of the Code of Criminal Procedure that a person convicted of such offences would not be liable to separate punishment for each offence. This follows from the illustration to S. 35, C.P.C. When the offences of committing house breaking with intent to commit theft and the actual commission of theft are declared by law not to be distinct offences within the meaning of S. 35, C.P.C. it follows that the two offences of which the petitioners have been convicted are not distinct offences for which separate sentences can be passed. This view is supported by the authority of the decisions in the cases *Bhub Singh v. Emperor* and *Alim Sheikh v. Shahzada Singh Barkandaz* (8 C.W.N. 305 and 483).

2. We accordingly make this Rule absolute and direct that the sentences of three months rigorous imprisonment passed on the petitioners under Ss. 147 and 225

I.P.C. will run concurrently and not consecutively.