

(1881) 02 CAL CK 0010

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Jubdur Kazi and Golab
Khan

RESPONDENT

Date of Decision: Feb. 18, 1881

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 454, 454
- Penal Code, 1860 (IPC) - Section 147, 148, 324

Citation: (1881) ILR (Cal) 718

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J

1. These appeals arise out of the same trial. The appellant s have been convicted of being members of an unlawful assembly, in which one Guru Churn received fatal injuries and one Babul Chund was less severely hurt.

2. It seems that they were acquitted of any offence as respects the death of Guru Churn, the conviction being for rioting armed with deadly weapons under s. 148, and for hurt caused to Babul Chund u/s 324, read with Section 149 of the Penal Code. The periods awarded being three years u/s 148, and two years under Sections 149 and 324.

3. The learned Counsel who appeared for Jubdur Kazi, appellant in No. 22, confined himself to urging that the sentences passed upon his client were in excess of what could be passed, according to law, and that the injuries caused to Babul Chund by one of the members of the unlawful assembly, not found to be his client, were not caused in prosecution of the common object of the assembly.

4. The learned Counsel's contentions apply equally to the case of Golab Khan, for whom, however, he did not appear.

5. The first point turns upon s. 454 of the Criminal Procedure Code, which provides for collective punishment either for one offence falling within two separate definitions of law, or for acts severally constituting more than one offence, but collectively coming within one definition. In the former case one punishment, and in the latter separate punishments, may be awarded ; but in the former case it must not exceed what can be awarded for either offence, and in the latter they must not collectively amount to more than could have been awarded for any one of [720] the several offences, or for the combined offence. Illustration (f), which is referred to by the Judge, shows that offences-under Sections 147, 324, 152 may be separately dealt with.

6. In this case the conviction is for offences under Sections 147 and 324, and this-Court has held that separate convictions under those sections are not legal : vide the case of Queen v. Durzoola 9 W. R. Cr. 33. There is, however, a contrary ruling in the case of Queen v. Callachand (7 W. B. Cr. 60), followed apparently in Empress v. Bam Adhin (I. L. R. All. 139); but whether there can be separate convictions or not, it is certain that, u/s 454, Criminal Procedure Code, the collective punishment must not exceed that which may be given for the graver offence : Reg. v. Tukaya Bin Tamana (I. L. R. 1 Bom. 214).

7. We shall, therefore, reduce the sentences on these appellants to three years in each case.

8. It is not necessary to discuss the second question raised in the appeal of Jubdur Kazi.