

(1868) 12 CAL CK 0025

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Dina Sheikh and Others

RESPONDENT

Date of Decision: Dec. 15, 1868

Judgement

Macpherson, J.

It seems to us that the conviction of the prisoner on the two offences of using force and escaping from custody is wrong. There is no evidence that the prisoner did any thing but escape. A body of men are found by the Assistant Magistrate to have rushed in between him and the Police, and he took advantage of their act and escaped. That is what has been found upon the facts by the Assistant Magistrate. It is not clear how the Assistant Magistrate finds the prisoner guilty of using force : he does not allude to it in his English judgment, It may be that he means to find that the prisoner used some amount of force in escaping. He could hardly escape without using some force; but in such a case, the use of force would be a part of the offence of escape, and it would be wrong to convict of both offences, and sentence separately for both. We, therefore, set aside the conviction, and sentence for the offence of using criminal force. These prisoners have been convicted u/s 353 of using criminal force to certain constables in the execution of their duty; and also u/s 225 of intentionally rescuing one Kalisankar Sandyal from custody; and for each offence they have been sentenced to a month and a half's imprisonment by Mr. Testroy, the Assistant Magistrate of Serajgunge. The convictions and sentences were confirmed on appeal by Mr. Humphrey, Magistrate of Pubna. The proceedings were sent for on application to this Court, it appearing upon the face of the decision passed by the Assistant Magistrate that the two separate convictions were based upon the same facts. The record has since been examined and it seems quite clear that the two convictions, as they stand, are wrong. The facts found against the prisoners are that they formed part of a body of men who interposed between some constables of police and an arrested prisoner, and thereby rescued him.

2. The act which the prisoners committed was one single act. Their offence was a single offence. They intentionally rescued the prisoner. The act of rescue was accomplished by the use of a certain amount of criminal force. The prisoners, under such circumstances, cannot be convicted of both rescuing the prisoner and using force. The using of force was a part of the offence of causing the rescue. We set aside the convictions of the prisoners for the offence of using force; and as the sentences passed upon them for the offence of rescuing a prisoner have already expired, the prisoners must be at once discharged.