

CALCUTTA HIGH COURT

Abhi Misser

Vs

Lachmi Narain

(Prinsep and Stanley, JJ.)

06.03.1900

JUDGMENT

Prinsep and Stanley, JJ.

1. The five persons concerned in the matter before us were convicted by the Magistrate of various offences under the Penal Code, and sentenced to separate sentences of one month's rigorous imprisonment for each of such offences. On appeal to the Sessions Judge, all these persons have been acquitted of every offence except one. It is not clear from the terms of the Sessions Judge's judgment, whether he affirmed the conviction of this offence as under Section 325 read with Section 149 of the Penal Code, or under Section 114 of abetment of an offence under Section 325. But we are inclined to think that he convicted the persons now before us of the last-mentioned offence. The Sessions Judge, after dealing with the appeals in this manner, referred the matter to this Court in revision for enhancement of the sentences so remaining, that is of rigorous imprisonment for one month in reference to each of these persons, because he considered that these sentences were inadequate, having regard to the acts of which the accused had been found guilty.

2. Shortly afterwards these persons applied to us and obtained a rule, the object of which was to consider whether the conviction and sentences could be sustained on the findings of the lower Courts.

3. Both these matters have been considered by us simultaneously. There can be no doubt that the petitioners having been acquitted of rioting, could not be properly convicted of grievous hurt under Section 325 by the application of Section 149 of the Penal Code, for it was not found that these persons or any one of them were members of an unlawful assembly in prosecution of the common object, of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of that assembly knew to be likely to be committed in prosecution of that object. So far, therefore, if the conviction be considered to be under Section 325 and Section 149 of the Penal Code, it is bad. But we are inclined to think, from the

concluding terms of the Sessions Judge's judgment, that he intended to convict these persons of abetment, as described in Section 114 of the Penal Code, of an offence under Section 325, for he

quotes

as authority for this *Empress v. Chatradhari Goala*¹. The finding of the Sessions Judge is, that "if the accused all joined together to beat the Sub-Inspector, so as to cause him grievous hurt, all would, by the provisions of Section 114 of the Penal Code, be guilty of an offence under Section 325." We have referred to the learned Judges who passed the judgment reported in *Empress v. Chatradhari Goala*² on which the Sessions Judge relies, and we are authorized by them to state that it was not intended to declare that the mere presence as an abettor of any person would, under the terms of Section 114, render him liable for the offence committed, and it has been explained that in that case it was found that the abetment had been committed before the actual presence of the accused at the commission of the offence abetted. This judgment, therefore, is no authority for the finding of the Sessions Judge. We think that the law has been properly expressed in the case of *Queen v. Mussamut Niruni and another* (1867) 7 W.R. Cr., 49(supra), in which it was held that to bring a prisoner within Section 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that 'if absent,' he would have been 'liable to be punished as an abettor and then to show that he was also present when the offence was committed. Under such circumstances, we think that the conviction and sentence passed by the Magistrate and confirmed by the Sessions Judge should be set aside, and it follows that the order under Section 106 of the Code of Criminal Procedure requiring them to give security to keep the peace becomes null and void.

Cases Referred.

1(1897) 2 Cal., W.N., 49

2(1897) 2 Cal. W.N., 49