

## PATNA HIGH COURT

Balgobind Thakur

Vs

Emperor

(Macpherson, J.)

13.04.1926

### JUDGMENT

#### **Macpherson, J.**

1. This Rule has been issued for the consideration of the conviction of the 14 petitioners, of whom 9 are, residents of Pardri and the others of Sahir. All the petitioners have been convicted under Section 147, 7 also under Section 379, Nos. 1 and 10 under Section 324, and No 6 under Section 325. Those who have been convicted under Section 147 only have been sentenced to fine, while the others have been sentenced to terms of imprisonment except petitioner No. 6 convicted under Sections 147, 325 and 379; who has been sentenced to imprisonment and fine.

2. The trying Magistrate exercised Second Class powers and the appeal from his decision was dismissed by the District Magistrate of Darbhanga.

3. The prosecution case which has been found to be true was as follows: Owing to a quarrel between the complainant and the second petitioner Banke Thakur the latter led a mob of 250 men including the other petitioners to loot the house of the complainant and to assault him. In the course of that occurrence hurt was caused to the complainant by the 1st petitioner, Balgobind, by means of a ganrasa and to Gopi Sahu by Bachha Jha petitioner No. 10 with a spear, while Surjanarain Thakur broke the arm of the complainant with his lathi. The petitioners who have been convicted of theft carried away the property of the complainant.

4. In support of the Rule Mr. S.P. Varma raises five points which I discuss seriatim.

5. First, he claimed 'a remand', inasmuch as the case for the prosecution showed offences under Section 148 and Section 395 of the Indian Penal Code which are not triable by a Magistrate of the Second Class. Having regard to the common object set out in the charge of rioting which was to loot the house and property of the complainant and to assault him and to the fact that Balgobind and Bachha Jha carried and used weapons for cutting, I do not think that this assertion

can be gainsaid and, therefore, the Second Class Magistrate was in error in trying the case. But that fact is not sufficient to establish the claim for a re-trial. In the first place no objection was taken either before the Magistrate or in the Court of Appeal to the jurisdiction of the trial Court and certainly, the Magistrate himself was under the bona fide belief that he had jurisdiction. Again it is impossible to say that there has been prejudice to the petitioners. I do not consider that prejudice can be inferred by reason of illustration (f) to Section 403 of the Cr.P.C. It may indeed be open in law to the Crown to have the petitioners subsequently V charged with and tried for graver offences on the same facts, but in the circumstance of the case such a course is highly improbable and in any event the sentences inflicted in the present case would be taken into consideration by the Court in awarding punishment in farther proceedings. Finally, it is now settled law that the proceedings of the Magistrate in a case like the present are not void under the provisions of Section 530 of the Cr.P.C. reference may be made in this connection to *King-Emperor v. Razya Bhagwanta*<sup>1</sup> *Empress v. Paramananda*<sup>2</sup> *Queen-Empress v. Gundaya*<sup>3</sup> *King-Emperor v. Ayyan*<sup>4</sup> and *Barhamdeo Rai v. Emperor*<sup>5</sup> and there are numerous unreported, cases to the same effect. This plea, therefore, cannot prevail.

6. It is next argued that there ought not to have been a conviction because there are inherent improbabilities in the prosecution story. All that is advanced in support of this plea is that three persons who are alleged to have taken a prominent part in the occurrence have been acquitted. But these persons who are alleged to be shortsighted, have apparently been acquitted from excess of caution and such an acquittal does not cast material doubt upon the conviction of the petitioners against whom there is abundant evidence which has been believed by the Courts.

7. Again, it has been faintly urged that the conviction is bad under s, 342, because the petitioner No. 5 was not examined until after the defence had adduced their evidence. It is clear that this petitioner has not been prejudiced and in, view of the decision of this Court on the point in the case of *Mohiuddin v. Emperor*<sup>6</sup> the contention cannot prevail. Moreover, in the present case, there was the good reason for the failure to examine this accused that at the time when the examination of the accused took place he was not present in Court and was then represented by a mukhtar, his personal attendance having been dispensed with.

8. The fourth plea is that the trial was bad because two important witnesses were not examined by the prosecution. They were Harnarain and Subnarain, two sons of Kunji, the latter a boy of 14. The latter is supposed to have made, some days after the occurrence, a statement subversive of the prosecution case. But that statement (which, moreover, should not have been admitted in evidence) was made under very suspicious circumstances. Kunji is the step-brother of Bachha Jha, petitioner (No. 10, and it seems clear that the statement was made under the influence of the latter. In any case there was no paucity of evidence of persons who were present at the occurrence. Of the seven persons who are alleged to have been injured, all except Harnarain, were put in the witness-box on behalf of the prosecution. Not only is the absence of these two witnesses reasonably explained but in the face of abundant testimony of eye-witnesses adduced

by the prosecution, any unfavourable inference, which might in law arise for failure to examine them, vanishes.

9. Finally, it is contended that the Appellate Court has not adequately discussed the evidence against individual accused. In my opinion the contention has no force. Even the passage read out by learned Counsel shows the District Magistrate directed his mind to the case of each individual accused and merely forbore to write down the grounds for his conclusions because they coincided with the reasons set out adequately by the trial Court.

10. In this view the application is without merits. It is accordingly rejected. The petitioners who are on bail must surrender forthwith to undergo the unexpired portions of their sentences.

#### Cases Referred.

14 Bom. L.R. 267

210 C. 85 : 13 C.L.R. 375 : 5 Ind. Dec. (N.S.)

313 B. 502 : 13 Ind. Jur. 469 : 7 Ind. Dec. (N.S.) 333

424 M. 675 : 2 Weir 699

590 Ind. Cas. 439 : 7 P.L.T. 272 : 26 Cr.L.J. 1559 : A.I.R 1920 Pat, 36

686 Ind. Cas 459, 6 P.L.T. 154 : (1925) Pat 112 : A.I.R. 1925 Pat. 414 : 3 Pat. L.R. 110 Cr. 26 Cr.L.J. 811 : 4 Pat. 488