

(1914) 08 CAL CK 0016
In the Calcutta High Court

Deputy Legal Remembrancer

APPELLANT

Vs

Kailash Chandra Ghose

RESPONDENT

Date of Decision : 19-08-1914

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 347, 352

Citation : (1915) ILR (Cal) 760

Hon'ble Judges : Teunon, J; Sharfuddin, J

Bench : Division Bench

Judgement

Sharfuddin and Teunon, JJ.—This Rule was issued calling upon the District Magistrate of the pabna and the opposite party to show cause why the order of the Sessions Judge, dated the 12th May 1914, should not be set aside, and the appeal re-heard on the merits. It appears that the two accused, Kailash Chandra Ghosh and Ram Chandra Ghosh, were tried under Sections 347, 352 and 352 coupled with Section 114 of the Indian Penal Code, convicted and sentenced. On appeal to the Sessions Judge an order was passed for a retrial on the ground of misjoinder. In order to understand how the question of misjoinder arose certain facts have to be stated. There is a gentleman named Rai Banamali Rai Bahadur who is a zemindar. There is a prevailing practice in his estate that no one is allowed to slaughter cows. It appears that on the Baler-id day just before the occurrence some Mahomedans slaughtered a Cow. This was considered to be a breach of the practice of the estate, and on the 14th December four men, vis., Mazam Ali Sheikh, Abdul Sheikh, Umed Ali Sheikh and Manik Sheikh, were called to the Cutcherry by two peadas and the inspector, and naib fined Abdul Sheikh Rs. 200 and Mazam Ali, Umedali and Manik Sheikh Rs. 50 each on account of the slaughter of the cow. It appears that on the 14th December only Rs. 9 was realised and the rest was promised to be paid three days later. On the 17th, the rest of the money was not paid with the result that on the 18th these persons were again brought to the cutcherry and again confined. On coming to know that information had been sent to the police on behalf of the confined persons, they were beaten with shoes, and ejected from the place in which they had been

wrongfully confined. The question is, whether the occurrence that took place on the 14th. December and one that took place on the 18th December were two distinct transactions or form parts of one and the same transaction. It appears that the object was to punish certain Mahomedans of this estate for a breach of the rule of that estate in slaughtering a cow. It was with that object these four persons were brought to the cutcherry, fined and a portion of the fines realised. These men had promised to pay the balance of the fines three days later, but they failed to do so, and so on the 18th, it is said, wrongful confinement again took place. There can be no doubt, therefore, that what took place on the 18th was in continuation of what took place on the 14th. It has been contended that on the 18th, another offence was committed namely, offences under Sections 352 and 352 read with Section 114 of the Indian Penal Code. therefore, this was a distinct offence and not in the same transaction, even supposing that the wrongful confinement on both days constituted one transaction. We think that the shoe-beating and other maltreatment of the Mahomedans when released from their wrongful confinement, were the concluding portions of the same transaction. They were all confined for one purpose, namely, for the purpose of extorting money, and on being informed that the police were coming, these men were shoe-beaten and turned out. The whole thing was really one transaction. The learned Sessions Judge was, however, of opinion that these were two distinct transactions. Therefore, he held that there was a misjoinder, and ordered a re-trial. The view that we have taken on the facts stated above is supported by the cases of Emperor v. Dalto Hanmant Shahapurkar (I. L. R 1905) . 30 Bom. 49. and Emperor v. Sherufalli Allibhoy I. L. R. (1902)Bom. 135. Our attention has also been directed to two cases by Mr. Roy, the counsel for the accused, viz., the cases of Budhai Sheik v. Emperor () ILR. 1905 al. 292. and Gul Mahomed Sirear v. Cheharu Mondal 10 C. W. N. 53. The facts of the two last-mentioned cases are different from the facts of the present case.

2. We, therefore, make the present Rule absolute, set aside the order of the learned Sessions Judge, dated the 12th May 1914, and direct that the appeal be now heard, on the merits.

3. Let this record be sent down at once.