

(1906) 02 CAL CK 0030
In the Calcutta High Court
Case No : Rev. Nos. 77 and 79 of 1906

Moharuddi Malita and others

APPELLANT

Vs

Jadu Nath Mandul and others

RESPONDENT

Date of Decision : 20-02-1906

Acts Referred:

Citation : (1906) 02 CAL CK 0030

Judgement

1. In these two oases which have been heard together and will be governed by this judgment rules were issued on the District Magistrate of Nuddea to show cause why in each case the conviction and sentences passed on the Petitioners by the Sub divisional Magistrate of Kushtea, on the 12th January 1906, should not be set aside on the ground that they are contrary to the law as laid down in Gul Mahomed Sircar v. Cheharu Mandal 10 C.W.N. 53 (1905) and in Budhai Sheikh v. Tarap Sheikh 10 C.W.N. 32(1905). The Magistrate has submitted a written explanation showing cause and the Petitioners have been represented by Counse in support of the two rules.

2. Five separate complaints were filed against the Petitioners in the Court of Sub-divisional Magistrate of Kushtea, charging them with having on the 3rd July 1905 with others formed members of an unlawful assembly, and in prosecution of the common object of that assembly with having cut and carried off the crops from the fields of the five complainants.

3. It was arranged by the Magistrate with the consent of the pleaders for the Petitioners that the Petitioners should be placed on their trial in 3 of the cases viz, Nos. 678/512, 674/511 and 572/509 at a joint trial and order to that effect was passed on the 7th November 1905.

4. It was also at first arranged that the Petitioners should be tried in the other two oases Nos. 700/552 and 672/510 summarily in separate trials, but subsequently on the 31st November 1905, at the instance of the pleader for the Petitioners it was agreed that the Petitioners should be tried for the two offences in the regular way in a joint trial. These facts appear from the order sheets.

5. On the 12th January 1906, the four Petitioners were found guilty in the batch of three cases of offences punishable under sees. 143 and 379, I.P.C., and were sentenced to a fine of Rs. 25 each or 3 weeks" rigorous Imprisonment in default under sec 143, I.P.C., for each of the teree offences and they were also bound over to keep the peace for one year under sec 106, C.P.C.

6. In the batch of two cases the Petitioners were convicted on the same day of offences punishable under sees. 143 and 379, I.P.C., and were sentenced under sec 143, I.P.C, to rigorous imprisonment for 3 weeks each for each offence and were also bound over to keep the peace for a year.

7. Against these convictions the rules were obtained in the terms already stated.

8. At the hearing it has been admitted that the facts of the present cases are different from those of the case of Budhai Sheikh and Tarap Sheikh 10 C.W.N. 32 (1905) as the offence complained of in the present cases were all committed on the same date and in fact form part of the same transaction.

9. But it has been argued on the authority of the case of Gul Mahomed Sircar v. Cheharu Mandal 10 C.W.N. 53 (1905) that there was in each of the trials a fatal illegality because distinct charges had not been framed for each of the distinct offences.

10. In the batch of three cases the charge has been framed as follows:

First, that you on or about the 3rd July at Bouldah committed theft of paddy from the fields of (a) Srinath Das, (b) Jhumar Pramanick, (c) Laskar Pramanlck and thereby committed an offence punishable under sec. 379 of the Indian Penal Code and within my cognizance.

Secondly, that you on or about the same day 3rd July at the same place Bouldah formed members of an unlawful assembly the common object of which was to commit an offence, viz., theft and to assert a right or supposed right by means of show of criminal force and thereby committed an offence punishable under sec 143, of the Indian Penal Code, &c., &c.

11. Strictly speaking three separate charges should have been drawn up in identical terms for the three offences under sec. 379, I.P.C. What has been done is that three offences have been kept separate and have been distinguished by the letters (a), (b), (c) instead of drawing out the three separate charges. This no doubt is not in strict accordance with the letter of the law but the question is whether it is an illegality which is fatal to the trial or an irregularity which can be cured by the provisions of sec 537, Cr. P. Code. In our opinion it is in this case only an irregularity. The three offences have been set out distinctly and the error is in form rather than in substance. The error could have been cured had the contents of the document containing the charges been the same but arranged in different paragraphs. The accused were tried for the three offences in a joint trial under the arrangement made with the concurrence of their pleaders and it has not been shown that they have been prejudiced by the error or that it has

occasioned a failure of justice.

12. The present case is distinguishable from the case of Gul Mahomed Sircar v. Cheharu Mandal 10 C.W.N. 53 (1905), as in that case it was not shown in the charge that the two offences were distinct or that they were not committed at different times.

13. In the batch of two cases the charges framed were in similar form.

14. First, that you on or about the 3rd July at Bouldah committed theft of paddy 10 C.W.N. 53 (1905) of Jadunath Mondal and 10 C.W.N. 32 (1905) of Nafar Pramanick, &c. &c.

15. The second charge under sec. 143, I, P.C., was similar to that in the batch of 3 cases set out above.

16. Here again it is clear that the accused were charged with two distinct offences of theft and this is what it was intended to indicate in the charge. Strictly speaking two distinct charges should have been framed. In this case too we are of opinion that the error was one of form rather than of substance and it was an irregularity and not an illegality, it certainly has not been shown that the Petitioners were in any way prejudiced by it or that it occasioned a failure of justice. For the above reasons we are not prepared to interfere and discharge both the rules.