THE QUEEN *v.* NANDUA *et al.*

D. C., Kandy (Criminal) 823.

1895.
December 31.

Riot—Voluntarily causing hurt—Ceylon Penal Code, s. 67.

When five or more people assemble with the object of beating a particular person, and do beat him, they are guilty both of riot and voluntarily causing hurt; but inasmuch as the act of riot is made up of the offences of unlawful assembly and voluntarily causing hurt, which was the object of the assembly—

Held, that their case fell under section 67 of the Ceylon Penal Code, and that they should be punished for the principal offence of riot only.

Case of *Munivala v. Davitha, Civ. Min.*, 11th December, 1895, disapproved.

THE facts of the case appear in the following judgment of the Supreme Court.

Dornhorst, for appellant.

Dias, C.C., for respondent.

Cur. adv. vult.

31st December, 1895. WITHERS, J.— WITHERS, J.

In this case nine persons were indicted before the District Judge of Kandy for the two offences, one of riot under section 144, Ceylon Penal Code, and the other of voluntarily causing hurt to Spencer Walter Gane under section 314, Ceylon Penal

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Code, at Holton estate, on the 27th day of August last. The District Judge found all the accused, except the third accused, guilty of both offences. The third accused, Yamanagedara Howadia, the District Judge has acquitted of both offences, and has discharged him.

The judgment was pronounced on the 3rd December, and the sentence awarded on the following day.

The first accused was sentenced to nine months' rigorous imprisonment for the offence of rioting and to three months for voluntarily causing hurt.

The second accused to six months for rioting and to two months for voluntarily causing hurt.

The ninth accused to four months for rioting and to two months for voluntarily causing hurt.

The fourth, fifth, sixth, seventh, and eighth were on the second day found to be "constructively guilty under section 146 of voluntarily causing hurt."

The District Judge thought it sufficient to pass one sentence on them for the two offences. This really makes a third offence, for on the previous day he had convicted them of rioting and voluntarily causing hurt.

The sixth accused was sentenced to three months' rigorous imprisonment because he took a more prominent part than the fourth, fifth, seventh, and eighth.

Mr. Dornhorst appeared for the accused appellant, and Mr. Crown Counsel Dias in support of the judgment.

At the close of the case I had no doubt in my own mind that most of the accused had been well convicted, at least of one of the offences, riot or voluntarily causing hurt.

Mr. Dornhorst, however, pressed on me a judgment of mine recently pronounced in the case of *Muniwala v. Davitha et al.* (498 P. C., Hambantota, 1557). In that case I made observations which implied that if some five or more people assembled together with the one object of assaulting a person, and they carry their purpose into effect, they are guilty of assault rather than of riot. I took time to consider that proposition, and after consideration I think it is not strictly accurate.

Having looked carefully again into our Penal Code, I think that according to that Code if five people or more assemble with the object of beating a particular person, and do beat him, they are guilty both of riot and of assault, but it is quite a different question whether they should have different punishments for these two offences.

I readily follow what I find appears to have been laid down by

the Madras High Court as reported in Prinsep's Indian Criminal Procedure Code: "Where the charge is founded on one single "continuous transaction, the first thing to be ascertained is what "is the principal legal offence involved in the conduct of the "accused; what would subject him to the greatest amount of "punishment. That being ascertained should form the first head "of the charge; the object of adding others is not the accumulation "of punishment, but to provide against the event of the evidence "failing to establish the principal charges."

In this case clearly the principal offence was riot. Some of the accused assembled together with the sole object of assaulting Mr. Gane. They effected their purpose. Riot was thus the principal offence they committed. That act of riot again was made up of two other offences, unlawful assembly and voluntarily causing hurt, which was the object of the assembly. They therefore should only be punished for the principal offence of riot. This case comes clearly within the provisions of section 67 of our Penal Code.

Another point I took time to consider was the nature of the evidence against the fourth accused, Medakotuwe Belinda; fifth accused, Amunagedara Horatella; and eighth accused, Udugamagedara Pasumba.

I have carefully gone over the evidence a second time, and I think the evidence against them is of very much the same character as that against the third accused, and I think they ought to have the benefit of the doubt as to their being present on the occasion of the assault on Mr. Gane.

I therefore reverse the conviction against these appellants and acquit them. The sentences against the first, second, sixth, seventh, and ninth accused, for the offence of rioting, I affirm. The sentences against the first, second, and ninth, for voluntarily causing hurt, I set aside.

In the result the first accused, Pitakotuwa Nandua, is sentenced to nine months' rigorous imprisonment for rioting. The second accused, Pituwella Nandua, is sentenced to six months' rigorous imprisonment for rioting.

The sixth accused, Pitawatugedara Menika, is sentenced to three months' rigorous imprisonment for rioting.

The seventh accused, Pudunay Hawadiya, is sentenced to one month's imprisonment for rioting.

The ninth accused, Pallemadi ta Horatella, is sentenced to four months' rigorous imprisonment for rioting.

The fourth, fifth, and eighth accused are acquitted.