

[FULL BENCH.]

Present : Bertram C.J. and Ennis and De Sampayo JJ.

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THE KING v. AMAN.

219—D. C. (Crim.) Badulla 4,768.

Joinder of charges—Running amuck—Stabbing two persons—Criminal Procedure Code, s. 180.

The accused, who was drunk, had an altercation with A, and stabbed him. Then he rushed along a crowded street, and about 30 yards off, seeing B, with whom he had an altercation the previous day, reminded him of the occurrence, and stabbed him also.

Held, that in the circumstances of this case the two acts were so connected together as to form the same transaction under section 180 of the Criminal Procedure Code, and he could be properly tried on one indictment.

BERTRAM C.J.—“The word ‘transaction’ is sufficiently general to cover the case of a man who is reduced to a state of temporary frenzy by drunkenness or drugs, and in pursuance of the condition so generated runs along a street and commits a series of offences, sometimes inspired by one motive and sometimes by another, against persons with whom he comes face to face.”

THE facts appear from the judgment.

A. St. V. Jayawardene, for the appellant.

Garvin, S.-G. (with him Jansz, C.C.), for the Crown.

February 2, 1920. BERTRAM C.J.—

In this case the accused was prosecuted on an indictment including two counts, one for causing hurt to Sena Abdul Cader, and the other for voluntarily causing hurt to Cader Meera Saibo. The two offences were committed owing to the fact that the accused had got into a condition of violent drunkenness. He had words with the man who is the subject of the second count, pulled out a knife and stabbed him. He then rushed on along the street, in which were several boutiques, and about thirty yards from the place where he committed the first offence he saw Sena Abdul Cader. He had had an altercation with him the previous day about some rice. The accused reminded him of the occurrence, and stabbed him also. The two offences were committed in the same street, and the man who was struck on the occasion of the second offence could see from where he was standing the disturbance going on in which the first

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offence was committed. The accused has been convicted, and Mr. Jayawardene, arguing on his behalf on the appeal, has raised two objections to the indictment.

The first is that charges of grievous hurt and simple hurt cannot be combined on an indictment under section 179 of the Criminal Procedure Code as offences of the same kind, inasmuch as they are not offences punishable by the same amount of punishment under the same section. He maintained that, on the authority of the Privy Council case which he cited, any misjoinder of this nature was necessarily fatal to the indictment as being an illegality and not an irregularity.

The second objection was that these two offences could not be considered as a series of acts so connected together as to form the same transaction under section 180 of the Criminal Procedure Code. It is not necessary for us to consider the first objection. The principle involved must remain for determination at some future occasion. It is sufficient to say that in this case we are of opinion that the acts were so connected together as to form the same transaction under section 180. That being so, the indictment is justified by the terms of that section.

Mr. Jayawardene relied on a series of Indian cases. But, in my opinion, these cases, if closely examined, do not support his argument.

The first case was of *Queen Empress v. Pakira'pa and others*.¹ What that case, in my opinion, laid down was this, that in determining whether a series of acts ought to be considered part of the same transaction, it is proper for the Court to take into account the effect of such a course upon the fairness of the trial, and that it would be straining the construction of the section to apply it to events separated by distinct, that is to say, substantial intervals of time and place. That case has obviously no application here.

The second case was *The Emperor v. Sherufalli Allibhoy*.² In that case certain elements were mentioned as constituting a transaction within the meaning of the section. They were (1) purpose, (2) cause and effect, and (3) principal and subsidiary acts. These are very useful examples of what constitutes a transaction. They indicate connections between circumstances which do, in many cases, bring about a transaction. But they are certainly not intended to be exhaustive. There are other circumstances besides those enumerated which are sufficient to establish a transaction within the meaning of the section.

The next case was *The Emperor v. Datto Hanmant Shahapurkar*.³ There it was said (page 54) "the word 'transaction' means 'carrying through,' and suggests, we think, not necessarily proximity in time, so much as continuity of action and purpose," and

¹ (1890) 15 Bom. 491.² (1905) 30 Bom. 49.³ (1902) 27 Bom. 135.

the Court added, " that the successive acts may be separated by an interval of time, and that the essential is a progressive action, all pointing to the same object. In section 239, therefore, a series of acts separated by intervals of time are not, we think, excluded, provided that those jointly tried have throughout been directed to one and the same objective. "

Here again, the Court is not making any exclusive definition. The particular category of circumstances it has in mind is that in which identity of purpose is relied upon as the connecting circumstance constituting the transaction. What the Court said was that if this is the class of case which is under consideration, it is not fatal to the circumstances being regarded as a transaction, that the acts referred to are separated by intervals of time.

Finally, there is the important case of *Cheragudi Vanakatadri v. Emperor*.¹ Here the previous cases are reviewed, and the law is very clearly laid down. Benson J. says: " I do not think that it is necessary or advisable to attempt to define the expression ' the same transaction, ' which the Legislature has left undefined. Whether any series of acts is so connected or not must necessarily depend on the exact facts of each case, but these are so varied in character that it is impossible to provide a completely accurate definition. " Abdur Rahim J. in the same case said: " Now what is the nature of the connection contemplated between different acts which would bind them into the ' same transaction ' " ? The idea conveyed by the words " same transaction " seems to be obvious enough, and it may be doubted whether it can be compendiously expressed " in simpler and clearer language. " The learned District Judge indicates that proximity of time and unity of place might in a given case furnish good evidence of the connection which unites several acts into one transaction. These words are very applicable to the present case. It is true that he went on to add certain words on which Mr. Jayawardene relies, namely " community of purpose or design and continuity of action are essential elements of the connection necessary to link together different acts into one and the same transaction. " That sentence has been embodied in the headnote. But the headnote is clearly misleading. The learned Judge is using these words in a particular context. He is using them with reference to a particular class of cases, namely, that class of cases in which community of purpose is relied upon in order to establish the connection. What he means is that where the prosecution relies upon community of purpose or design, they must also show continuity of action as well.

There is a further case, *Amrita Lal Hazre and others v. Emperor* ² where Mookerji J. lays down the same principle in much the same words as were used in the case last cited. " It is not possible to frame a comprehensive formula of universal application to determine

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whether two or more acts constitute the same transaction." Though he indicates certain considerations as bearing on the subject, he does not suggest that these considerations are exhaustive.

The real truth is that in all cases that question is a question of fact. The word "transaction" is defined in the Imperial Dictionary (which seems very closely to follow the definition in Webster) as "that which is done or takes place, an affair." Had the expression in our section been "a series of acts so connected together as to form the same affair" there would have been no question as to the meaning. The word "transaction" does not necessarily mean something which takes place between parties. That is explained in the case of *Drinecbier v. Wood*,¹ where Byrne J., in interpreting a similar phrase under the English rules of procedure, instances the case of a traction engine proceeding along a highway and causing damage to a terrace of several houses. He says: "In the illustration suggested by the illegal use of a traction engine passing in front of them, each owner would have to prove his title to his house, but the other questions of fact and law would be common to all the owners, and I have no doubt that they could all sue in one action."

The word "transaction" in my opinion, is sufficiently general to cover the case of a man who is reduced to a state of temporary frenzy by drunkenness or drugs, and in pursuance of the condition so generated runs along a street and commits a series of offences, sometimes inspired by one motive and sometimes by another, against persons with whom he comes face to face. In my opinion the objection to the indictment fails.

With regard to the sentence, the learned District Judge has imposed a sentence of lashes. The offender is a person who has been guilty of no previous lapse of this kind. He is a conductor, who had been reduced to this condition by getting violently drunk on a festal occasion. His offence is a serious one, and might have had tragic consequences. I do not think, however, that this case calls for lashes. In my opinion the case is sufficiently met by the sentence of two years' rigorous imprisonment which the learned Judge has imposed.

ENNIS J.—I agree.

DE SAMPAYO J.—I agree.

Sentence varied.

¹(1899) 1 Oh. Div. 397.