

## R. v. KENA.

## A CRIMINAL REVIEW CASE OF 1935.

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*Arson, Penal Code section 294—going armed without lawful occasion, Penal Code section 72—two charges joined in one trial—joinder of charges, contrary to Criminal Procedure Code section 127—conviction on second charge quashed.*

A native set fire to two huts in a village at night and disappeared; search was made for him without success but he reappeared early next morning carrying a bow and arrow, a spear and axe and threatened certain of the villagers. He was subsequently tried (at one trial) on two charges, viz.: (a) arson, (b) going armed without lawful occasion, and was convicted on both charges.

In the opinion of the trial Magistrate the burning of the two huts one night and the going armed early next morning were two acts so connected together as to form the same transaction, but the High Court held on review that there had been a misjoinder of charges.

Section 127 of the Criminal Procedure Code was repealed and replaced by Ordinance No. 28 of 1940. The relevant section is now section 127A.

Francis, J.: The arraignment of the accused on these two distinct charges and their determination at one trial was irregular. I do not think the irregularity is to be considered cured by the plea of the accused.

The two offences are not so connected together by one series of acts as to bring them within exception (b) of the rule under section 127 Criminal Procedure Code.

The result is misjoinder, a fatal objection.

I propose quashing the conviction and sentence in respect of the second charge, but before taking any step in the matter I desire that the Attorney-General be given the opportunity of making any submission he deems expedient.

As regards the first charge sentence is confirmed.

In this connection it may be that my order of transfer, which erroneously included two charges, has led the Magistrate into error. This remissness on my part is regretted; nevertheless two separate informations were filed which indicated separate trials, unless of course one of the exceptions in section 127, Criminal Procedure Code, applied.

In the event of the Attorney-General desiring to support the conviction please set the case down for hearing in Chambers.

For the reasons given in my memorandum of 17th April I quash the conviction and sentence in the second charge.

The Attorney-General has been given an opportunity of being heard and it is understood that he does not desire to support the conviction.