

Emperor Vs. Ismail Umar

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Court : Mumbai

Decided On : Jul-18-1938

Reported in : AIR1938Bom430; (1938)40BOMLR832

Judge : Broomfield and ;Norman, JJ.

Appeal No. : Criminal Appeal No. 214 of 1938 and Criminal Review No. 193 of 1938

Appellant : Emperor

Respondent : ismail Umar

Judgement :

Broomfield, J.

1. The accused has been sentenced to nine months' rigorous imprisonment for the offence of cutting his wife's nose. He has appealed against the conviction and at the time of admitting the appeal we issued notice to show cause why the sentence should not be enhanced.

2. The evidence of the wife is that she went to sleep at 10 p. m. on the night in question and woke up suddenly during the night and found the accused slashing at her nose. She cried out and Sadekhan came running up and afterwards he called the police. She says that she and the accused used to quarrel ; but

evidently from what she says there had been no quarrel immediately before the accused attacked her. Sadekhan, who is a laundryman living in the same building, says that he heard a woman shouting, went upstairs to the accused's room and found them both, the accused and his wife, there, and the wife was bleeding from the nose and told him that the accused had cut it off. The medical evidence shows that the tip of the nose was detached, there being a semi-circular incised wound, one and three-fourth inches long, half inch wide and one-fourth inch deep. The woman had to remain in hospital for treatment from April 18 until May 4. Even then she was discharged against advice. The doctor says that the injury was of such a nature that her nose is completely disfigured. The accused in his statement merely asserted that Saida, meaning apparently witness Sadekhan, was in league with his wife and that he had cut her nose. This is obviously a lie. Sadekhan was not even put any questions about it. There cannot be the slightest doubt that the accused has been properly convicted of the offence under Section 326, Indian Penal Code.

3. The question then is whether the sentence of nine months' rigorous imprisonment is sufficient. This Court has frequently considered the question of sentences for the offence of nose-cutting. In the earliest case, *Queen-Empress v. Abdul Rahiman* I.L.R. (1891) Bom. 580, a sentence of two years' rigorous imprisonment had been imposed and at the instance of the Local Government the High Court quashed the proceedings and ordered the accused to be committed for trial to the High Court, and after he had been found guilty by a jury, a sentence of eight years' rigorous imprisonment was imposed. It may be said that it was a particularly brutal case. The accused there had tied his wife by her arms and legs to a bedstead and then cut off the whole of the soft parts of her nose, and a portion of her upper lip. Mr. Justice Parsons described the offence as 'a fiendish act deliberately committed for the sole reason that the complainant would not live with the accused as his wife.' I think according to modern ideas a sentence of eight years' rigorous imprisonment would be considered too harsh except, no doubt, in a particularly bad case. We are not prepared to say that nose-cutting cases should, as a matter of course, be committed to the Court of Session for trial, although we do think that the Magistrate should always consider whether he ought not to commit.

4. In *Emperor v. Bhagwan Chhagan* (1914) 17 Bom. L.R. 68, the trial Court had imposed a sentence of four months' rigorous imprisonment and, on a reference from the Sessions Judge, this Court enhanced it to two years' rigorous imprisonment. That was done in spite of the fact that there was grave and sudden provocation. The Court pointed out that the act of nose-cutting is one which imports deliberate-design of a particularly brutal and cruel character. In an unreported case. *Emperor v. Dhula Hema* (1928) Criminal Review No. 106 of 1928, decided by Patkar and Murphy JJ., on June 8, 1928 (Unrep.), a sentence of one year's rigorous imprisonment was enhanced to two years. That was done on the authority of *Queen-Empress v. Abdul Rahiman* and *Emperor v. Bhagwan Chhagan*. On the other hand we have been referred to one case, *Emperor v. Dagdu Babaji Mali* (1928) Criminal Reference No. 114 of 1927, decided by Fawcett and Mirza JJ., on February 1, 1928 (Unrep.), in which a sentence of one month's rigorous imprisonment had been imposed and the sentence was enhanced by this Court to one year's rigorous imprisonment. The accused's case there was that his wife had been guilty of misconduct and although this Court held that there was no actual proof of misconduct there was no doubt that the accused had entertained suspicions against his wife.

5. In the present case, although the accused had suggested misconduct between his wife and Sadekhan, there is no ground whatever for supposing that he had any cause for his suspicions, if indeed he really entertained any. The wife has admitted that she and her husband used to quarrel and the witness Sadekhan deposes to the same effect. There is nothing in the evidence, however, to suggest that there was anything amounting to serious provocation.

6. We think that the sentence of nine months' rigorous imprisonment is inadequate and ought to be enhanced. We enhance the sentence to one of two years' rigorous imprisonment.