

Emperor Vs. Mana Gendal

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Court : Mumbai

Decided On : Jun-13-1930

Reported in : (1930)32BOMLR1143

Judge : Mirza and ;Broomfield, JJ.

Appeal No. : Criminal Appeals Nos. 206-208 of 1930

Appellant : Emperor

Respondent : Mana Gendal

Judgement :

Broomfield, J.

1. The three appellants in this case were committed to the Sessions Court of Kaira on a charge under Section 304 of the Indian Penal Code, the allegation being that they caused the death of one Dula Galab by inflicting injuries on his head and elsewhere in such circumstances that the offence constituted culpable homicide not amounting to murder. The Sessions Judge altered the charge to one of murder under Section 302, but convicted the accused of the offence of grievous hurt and sentenced Nos. 1 and 2 to five years' rigorous imprisonment under Section 325, and No. 3, who had used a knife, to seven years' rigorous imprisonment under Section 326.

2. The appeals have been admitted by this Court as regards the sentences only ; but, before dealing with the question of sentences, we think it desirable to make some preliminary remarks as to the propriety of the finding that the offence amounted to grievous hurt and nothing more. It appears that there is a growing tendency among Sessions Judges to convict of the offence of grievous hurt in cases of offences against the person which have resulted fatally. The description of grievous hurt contemplated is practically never stated. In the great majority of cases, it could only be that mentioned in the 8th clause of Section 320, viz., 'any hurt which endangers life'. That was so, for instance, in the case of *Emperor v. Khoda Samta* (1930) Cr. App. 198, decided by Mirza and Broomfield JJ., on June 11, 1930 (Unrep.). A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary and exceptional circumstances, be taken to know that he is likely to cause death. If the victim is actually killed, the conviction in such cases ought ordinarily to be of the offence of culpable homicide. In that connection I may refer to *Emperor v. Bai Jiba* : (1917)19BOMLR823 . The case before us now is a case of fracture of the bones of the skull. The evidence of the Doctor who held the post mortem on the deceased shows that there were contusions one on the right side of the forehead and one on the left side of the scalp ; and on dissection beneath these contusions, it was found that the frontal and both the parietal bones were fractured into several pieces, and the skull cap was depressed at various places pressing the substance of the brain. There was also an incised wound on the forehead, but the Doctor's opinion was that death was due to the fracture of the skull bones and the consequent injuries to the brain.

3. Now, if we consider the provisions of Section 322 of the Indian Penal Code, which gives the definition of the offence of voluntarily causing grievous hurt, it is clear that the conviction of the accused of the offence of grievous hurt when analysed implies a finding that they intended or knew themselves to be likely to smash their victim's skull. But if that is found, how can one stop short of finding that they knew that they were likely to cause the death of the victim In our opinion the offence established by the evidence in this case in respect of the injuries inflicted by accused Nos. 1 and 2 is culpable homicide not amounting to murder, and these accused should have been convicted of that offence.

4. The Sessions Judge has justified his conviction of the accused of the offence of grievous hurt only by reference to Emperor v. Bhola Singh ILR (1907) All. 282. The facts there were that three persons attacked a fourth with lathis and one of the assailants struck a blow which fractured the skull of the person attacked and caused his death; but the evidence left it in doubt which of the three assailants struck the blow. Under these circumstances it was held that none of the accused could be convicted of the offence of culpable homicide, and the Court convicted them all of grievous hurt on the ground that having regard to the fact that lathis were used by all the three assailants, and that the probable result of the use of lathis was at least grievous hurt, the common intention of the assailants might be deemed to have been to cause grievous hurt. In the present case we have carefully considered the medical evidence and we find no such uncertainty as to the cause of death or as to the responsibility of the several accused for it. As I have stated, the Doctor's evidence makes it clear that death was due to the blows on the head which fractured the skull of the deceased, and the evidence of the witnesses makes it clear that those blows on the head were struck by accused Nos. 1 and 2. The case of Emperor v. Bhola Singh ILR (1907) All. 282 is, therefore, clearly distinguishable. Moreover, that case is a doubtful authority in view of Emperor v. Gulab ILR (1918) All. 686. There has been no appeal by Government against the acquittal of an offence under Section 304, and we do not propose in this appeal by the accused to alter the finding. In our opinion the sentence of five years' rigorous imprisonment imposed on accused Nos. 1 and 2 is a reasonable sentence, whether the offence be under Section 304, part 2, or under Section 325. We certainly do not consider it excessive.

6. Coming to the case of accused No. 3, the Sessions Judge has not given any reason for inflicting a more severe sentence on him than on his companions. It is true that he was armed with a knife, whereas accused Nos. 1 and 2 had only sticks, but as we understand the medical evidence, the incised wound on the forehead inflicted by accused No. 3 was not responsible for the death of Dula, We are not altogether satisfied with the trial Judge's reasons for holding that 's. 34 of the Indian Penal Code does not apply in this case. We are disposed to think that on the evidence all the three accused, as they were really acting in concert, could properly have been convicted of an offence under Section ; 04. However, we leave

the conviction as it is under Section 326 and reduce the sentence imposed on accused No. 3 to five years' rigorous imprisonment as in the case of the other two accused.

Mirza, J.

7. I agree.

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