

Emperor Vs. Samat Kala

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Court : Mumbai

Decided On : Nov-10-1933

Reported in : AIR1934Bom156; (1934)36BOMLR210

Judge : John Beaumont, Kt., C.J. and ;Barlee, J.

Appeal No. : Criminal Appeal No. 472 of 1933

Appellant : Emperor

Respondent : Samat Kala

Disposition : Appeal allowed

Judgement :

Beaumont, Kt., C.J.

1. In this case the accused was tried by the Sessions Judge of Kaira with assessors on a charge under Section 302, Indian Penal Code, and he was convicted under Section 304, that is to say, of culpable homicide not amounting to murder, and sentenced to five years' rigorous imprisonment. From that conviction he appealed, and the Government of Bombay have also appealed against his acquittal under Section 302. The evidence against the accused consisted of four eye-witnesses, who say that on the day of a Holi holiday a squabble arose, and the accused's brothers at the instance of the accused started to beat one Gema, who had alleged that the accused had stolen his son's ear-rings. The deceased

interposed and rebuked the accused and his brothers. Thereupon the accused came up behind the deceased and gave him a blow with a dharia which penetrated the skull. The blow was a very severe one. According to the medical evidence it inflicted a wound 5' long, 5/6' broad, and 1' deep penetrating to the brain in the middle of the head. The learned Sessions Judge and the assessors accept the evidence of the prosecution witnesses, and I see no reason to differ from their conclusion. A verbal complaint was at once made to Exh. 8, who was a police constable on duty, that the accused had struck the deceased, and almost directly after the deceased died. On the same night a formal complaint was made by the deceased's brother charging the accused with the act. I see no reason, therefore, for thinking that the learned Judge arrived at a wrong conclusion in accepting the prosecution evidence. If that is so, the position is that the accused struck the deceased on his head with the sharp edge of a dharia with such force as to penetrate 1 inches into the skull. Prima facie that would seem to be a plain case of murder. The learned Sessions Judge held that the case might be brought under Section 304 as culpable homicide not amounting to murder on the strength of the decision of this Court in *Emperor v. Sardarkhan* I.L.R. (1916) Bom. 27 : 18 Bom. L.R. 793 That case may on its facts have been rightly decided; we are not concerned with that. It was a case in which the accused gave a blow on the head of the deceased with a stick, and that fact distinguishes the case from the present one, where the blow was given with a sharp instrument, viz., the dharia. But I must confess that I have some difficulty in following the reasoning of Mr. Justice Beaman in that case. He says (p. 29):

Doubtless the learned Sessions Judge (who had held the act to amount to murder) has followed what in a majority of cases-we think we must concede-to be the right and logical course. He has inferred the intention, that is to say, from the extent of the injury and the nature of the weapon used. On the other hand, where cases of this kind are tried by Jury, Juries are much more disposed to take a liberal and less logical view and to look at all the surrounding circumstances with the object, if possible, of reducing the offence and so, notwithstanding the character of the injury and the nature of the weapon, imputing a lesser intention to the accused.

On that basis the Court in that case held that the lesser offence might be imputed. The reasoning seems to me somewhat remarkable. It really comes to this, that although the Sessions Judge arrived at a logical and correct conclusion by applying the law to the facts, nevertheless because if the case had been tried by a jury, such jury might have arrived at a less logical and correct view, the High Court on appeal ought to assume to itself the infirmities of such hypothetical and non-existent jury and to reverse the correct conclusion of the trial Judge. I am quite unable to follow that reasoning. The ordinary rule in criminal cases is, and must be, that intention is to be inferred from a person's acts. In the majority of cases you cannot prove intention in any other way, and where a man strikes another on the head with a sharp instrument with such force as to penetrate to the brain, it seems to me that the only possible intention we can infer is an intention to cause an injury which the accused knew would be likely, and indeed bound, to cause death. That being so, I think we must dismiss the appeal of the accused and allow the appeal of the Government, and convict the accused under Section 302 of the Indian Penal Code.

2. With regard to sentence, there is no reason for thinking that the murder was premeditated. It took place on the day of a Holi holiday when probably the accused was excited, and we think that it is not a case in which the extreme penalty should be inflicted. We, therefore, sentence the accused to suffer transportation for life.

Barlee, J.

3. I agree, and have nothing to add.

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