

Emperor Vs. Subbappa Channappa

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Court : Mumbai

Decided On : Dec-13-1912

Reported in : (1913)15BOMLR303; 19Ind.Cas.331

Judge : Batchelor and ;Rao, JJ.

Appeal No. : Criminal Appeal Nos. 398 and 399 of 1912

Appellant : Emperor

Respondent : Subbappa Channappa

Disposition : Appeal dismissed

Judgement :

Batchelor, J.

1. In this case we have had a careful and thorough argument from Mr. Kelkar, but he has not succeeded in satisfying us that there is any good ground for supposing that the learned Sessions Judge's judgment is in any particular wrong with regard to the conviction of these two appellants. The conviction of them which now concerns us was of the offence of murder under Section 302 of the Indian Penal Code, each appellant being sentenced to transportation for life. We desire at the outset to express our entire concurrence with the learned Judge's action in altering the charge as originally framed to a charge of murder, and with the reasons which

the learned Judge has given for that action. We think he is quite right in saying that where culpable homicide has been committed, prima facie the principal issue is : whether that culpable homicide does not amount to murder, and in all ordinary cases that issue ought to be tried, and ought not to be prejudged, by any authority less than the authority of a Court of Session.

2. With regard to this offence itself the evidence is overwhelming that the deceased Subapgauda's death was caused by these two appellants. It is urged that some of the witnesses who depose to this fact should be regarded as partisans of one of the two village factions. The evidence, however, does not establish that, nor do we believe it to be the case; but even if it were the case, the same fact is put beyond doubt by the two Police Constables who are clearly independent of these disastrous village factions. These witnesses prove that the manner of Subapgauda's death was this, that as he stood unarmed and bareheaded, protesting against the use of violence, the two appellants rushed at him, No. 1 striking him savagely on the head with a heavy stick held in both hands, and No. 2 smashing in his skull by a blow dealt with a heavy stone, not thrown as a missile, but held firmly in the second appellant's hands.

3. On the evidence it is further established that the two appellants were acting in concert in the sense that their attack was a single indivisible thing, so that both of them would be liable for the result which ensued. That is the consequence of the provisions of Section 37 of the Penal Code which enacts that when an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. On the evidence we are satisfied, as the learned Judge was satisfied, that the first appellant, who used the stick intentionally co-operated in the commission of the murder with the second appellant, who used the still more cruel weapon, the stone.

4. Then it was urged by Mr. Kelkar that Subapgauda's death was caused without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel, and that, therefore, the killing was reduced from murder by reason of Ex. 4 to Section 300 of the Code. Here again, however, we agree with the learned Judge that it is

not shown upon evidence that any sudden or general fight was in progress when Subapgauda was attacked. On the contrary we think that the general fight such as it was did not originate till after Subapgauda had fallen. Moreover, even if there was some kind of fight in progress it was one of very little gravity from the point of view of the appellants and their associates, for none of them received any injury which required medical treatment. That being the character of the fight, if there was a fight impending, it is clearly not open to the appellants to take advantage of the 4th Exception to Section 300, seeing that upon the evidence they are obviously shown to have taken undue advantage and acted in a cruel or unusual manner. We see, therefore, no reason to interfere with this conviction which appears to us to be based upon perfectly adequate evidence. It is essential that murderous attacks, such as these, should be rigorously suppressed, and there is no ground for the exercise of any leniency. We affirm the conviction and sentence and dismiss these appeals. The argument has been restricted to the conviction and sentence on the charge of murder, and that being so, we need only say that we affirm also the convictions and sentences passed upon the other counts in the charge.