SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Dulli Vs. Mangli and ors.

Dulli Vs. Mangli and ors.

SooperKanoon Citation : sooperkanoon.com/448615

Court : Allahabad

Decided On : Feb-18-1926

Reported in : AIR1926All332; 94Ind.Cas.132

Appellant : Dulli

Respondent : Mangli and ors.

Judgement :

1. On an application made by a relation of a deceased person a learned Judge of this Court issued notice to four persons to show cause why the sentence passed on them by the learned Sessions Judge of Fatehpur should not be enhanced. The four men have been convicted of an offence under Section 323 of the Indian Penal Code and the maximum sentence has been passed. The question, therefore, will arise of an alteration in the conviction if the sentence has to be enhanced.

2. The facts as found by the learned Judge are that one Maiku was attacked with lathis by these four men and extensive injuries were caused to him. He died immediately after, and at the post mortem examination it was found that his ribs had been broken. According to the medical witness death was due to rapture of the spleen resulting from the fracture of the ribs. The spleen was not enlarged. The learned Judge acquitted the accused persons of an offence under Section 302 of the Indian Penal Code but did not consider whether an offence under Section 325 of the Indian Penal Code was committed or not.

3. The learned Assistant Government Advocate pointed out that under Section 439 of the Code of Criminal Procedure this Court was precluded from converting the finding of acquittal under Section 302 into one of conviction as there was no Government appeal. This has been laid down by a Bench of this Court in the case of Emperor v. Sheodarshan AIR 1922 All 487 and in a judgment of the learned Chief Justice in Nand Ram v. Khazan AIR 1921 All 266. In the present case however we do not propose to alter the acquittal under Section 302 of the Indian Penal Code to one of conviction under that section. The injuries were caused not on the head or neck but on the lower portion of the body and it appears likely that the accused persons had not the intention of causing death. There is also no evidence that the injuries intended to be inflicted were sufficient in the ordinary course of nature to causa death. The medical witness has not stated that fracture of the ribs in the ordinary course would lead to a rupture of the spleen.

4. The question at issue is whether upon the facts disclosed and found by the lower Court a conviction under Section 325 should be recorded or not. There has been no acquittal of the accused persons of an offence of causing grievous hurt, so we are of opinion that we are not precluded from convicting the accused persons of that offence by reason of Clause (4) of Section 439 of the Criminal Procedure Code. It is certain that Maiku's ribs were fractured during the beating given to him by the accused persons and it ought to make no difference whether the ribs were fractured by lathi blows or by Maiku being knocked down on the ground. The extensive marks of injuries found on Maiku's person at the time of the post mortem examination leave no doubt that the intention of the accused persons was to cause grievous hurt. There is no suggestion made on the part of the defence that the ribs were not fractured during this particular beating. The defence that Maiku was beaten two days earlier and died from the effects of the injuries received then has been negatived by the medical evidence which is to the effect that the injuries were such as to result in death immediately after they were received. After such injuries the injured parson could not have survived for two days.

5. We do not agree with the observation of the learned Judge: 'It cannot be presumed that the Accused Nos. 2 to 5 caused the fracture of the ribs.' When

there is no evidence or suggestion that the ribs were fractured otherwise than during this particular beating, the presumption is that they were fractured by the act of the accused persons even though they may not have been fractured as the direct result of lathi blows.

6. In the result we alter the conviction to one under Section 325 of the Indian Penal Code and enhance the sentence in each case to rigorous imprisonment for five years.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com