

Emperor Vs. Mendi Ali

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Court : Allahabad

Decided On : May-02-1941

Reported in : AIR1941All310

Appellant : Emperor

Respondent : Mendi Ali

Judgement :

ORDER

Braund, J.

1. This revision is the outcome of a comment made by me on reading a judgment in the form of a Sessions statement. The facts of the case are that a young man Mendi Ali, was charged with murdering his wife, Mt. Sughra, on 17th November 1939. I have read the evidence and see no reason to disagree with the findings of fact arrived at by the learned Sessions Judge. I can, therefore, take the facts from the judgment itself. The learned Judge has found that the accused man did in fact kill Mt. Sughra, his wife, by beating her in what he described as a savage and brutal way about the head and body with a lathi. In all she had not less than 33 injuries of which four were grievous. Had that been all, there would, of course, have been no doubt but that it was a case of murder. But the learned Judge, on a careful examination of the evidence, went on to find that the accused killed the woman under the influence of grave and sudden provocation and while wholly

deprived by that provocation of the power of self-control. The established facts which led the learned Judge to that conclusion, coupled with the circumstances of the case, was that he held that the accused had come across Ma wife in the act of adultery with another man. Those are the facts as found by the Judge. To take his own words, he says:

There can be little doubt that the accused had sudden and grave provocation when he saw her with his own eyes committing adultery with Niamat....

and again:

There can be no doubt that the accused did Mfc. Sughra to death in a very callous and brutal manner but at the same time it must be remembered that he had a sudden and grave provocation and was altogether deprived of the power o self-control

2. Upon those findings the learned Judge quite rightly found the accused guilty, not under Section 302, but under part 1 of Section 304, Penal Code, and sentenced him to undergo ten years' rigorous imprisonment which (omitting transportation for life) is the maximum sentence of imprisonment under Section 304 and he sentenced him also to pay a fine of Bs. 100 or to undergo a further period of a years' rigorous imprisonment in default of paying that fine. In other words, the learned Judge sentenced him to a maximum term of rigorous imprisonment for the offence for which he was found guilty and added to it a fine (which there could surely have been little prospect of his paying). The result was that he was, in effect, sentenced to eleven years' rigorous imprisonment.

3. So far as the fine is concerned, I cannot think it is proper, in the case of a poor peasant, to add to a very long term of substantive imprisonment a fine which there is no reasonable prospect of the accused man paying and for default in paying which he will have to undergo a yet further term of imprisonment. And, in my judgment, without venturing to say whether it is a course which is strictly in accordance with the law or not, I cannot help thinking that it becomes all the more undesirable to impose such a fine where the term of imprisonment to be undergone in default will bring the aggregate sentence of imprisonment to more

than the maximum term of imprisonment sanctioned by the particular section under which he is convicted. I venture to think that Judges should exercise a careful discretion in the matter of superimposing fines upon long substantive terms of imprisonment. For these reasons I shall, in any case in revision, relieve the accused of his sentence to a fine. But the matter does not quite end there, because it appears to me to be a matter of some concern whether, in the circumstances of this case, the sentence of ten years' rigorous imprisonment, the maximum sentence of imprisonment under the section, was not itself a good deal too severe. It appears to me to be verging on the illogical to say that a man has been so sorely provoked as to have been deprived completely of his power of self-control-and that is what the Judge has found-and at the same time to sentence him to a maximum punishment under Section 304, Penal Code. I do not wish to be thought to be expressing a view that in no circumstances might such a course be justified. But it does appear to me that, in the majority of such cases, it must be a contradiction in terms to concede that a man has been wholly deprived of all power of self-control for a reason which the law recognizes as adequate and at the same time to say that he deserves the most severe punishment that his crime admits of. And it is, I think, a confusion of thought to permit in such circumstances the nature or number of the blows given to count in assessing what punishment should be given. Ex hypothesi, the man had no control of himself, and for that reason alone it appears to me that the number and nature of the injuries inflicted must necessarily lose their significance. In a case in which a man who has control of himself is charged with killing or injuring another, it is obviously right to measure his frame of mind by looking to see exactly what it was that he did and how he did it. But that loses all its force when, ex hypothesi, it has been found that the person whose conduct is being enquired into has been deprived of all power of self-control. The learned Judge has described what the accused did as 'callous' and 'brutal.' He has treated the evidence of the 33 injuries as pointing to 'callousness' and 'brutality.' But, in reality, they do nothing of the kind, once it is appreciated that ex hypothesi the man was altogether out of control of himself. The number of wounds point really to nothing but his own lack of self-control. If it is once conceded that one who injures another has no control of himself, then it seems to me that there remains no room either for 'callousness' or 'brutality' or, indeed, for

any other conscious emotion. In short, he ceases to be master of himself.

4. For these reasons, I think that the sub-stantive sentence of ten years' rigorous imprisonment in this case excessive. I propose to reduce it by half and to sentence the accused to five years' rigorous imprisonment without any fine. Even this sentence does not, upon the findings of the learned Judge, err upon the side of leniency.

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