

Ghulam Mohammad Vs. Rex

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Court : Allahabad

Decided On : Jul-14-1949

Reported in : AIR1950All91

Judge : Bind Basni Prasad and ;Bhargava, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 100, 300, 302 and 304

Appeal No. : Criminal Appeal No. 684 of 1948

Appellant : Ghulam Mohammad

Respondent : Rex

Advocate for Def. : Shri Ram, Assistant Government Advocate

Advocate for Pet/Ap. : M.A. Kazmi, Adv.

Judgement :

Bind Basni Prasad, J.

1. Ghulam Mohammad, aged twenty-five years, resident of the city of Muzaffarnagar, has been convicted by the learned Sessions Judge under Section 302, Penal Code, and sentenced to death. He appeals against that conviction and there is also the reference by the learned Sessions Judge for the confirmation of the death sentence.

2. The prosecution case was that on 7th January 1948, Ghulam Mohammad appellant, Mohammad Ayub deceased and Laiq Ahmad, a boy of fourteen, came out of the Novelty Talkies at about 9 P. M. Mohammad Ayub was demanding from the boy Laiq Ahmad to repay Rs. 3,000, but Laiq Ahmad stated his inability to pay the amount. Ghulam Mohammad is said to have intervened and to have asked Mohammad Ayub not to tease the boy. This intervention by Ghulam Mohammad was not liked by Mohammad Ayub and he gave a shoe beating on the face of Ghulam Mohammad. Upon this, Ghulam Mohammad took out a knife from his pocket and struck Mohammad Ayub with it. Kalu Ram constable happened to be nearby at the shop of a milkman. His attention was attracted by the noise caused and he arrived at the scene. He found Mohammad Ayub severely injured. He took Mohammad Ayub on a thela to the Kotwali, arrested Ghulam Mohammad on the spot and took into his custody the blood stained knife from the hands of the appellant. It is said that there was also a blood-stained muffler on the body of the appellant and he took it also in his custody. Mohammad Ayub died soon after. The post mortem report shows that there were five stab wounds and one incised wound on the person of Mohammad Ayub. Some of these stab wounds were on the vital parts of the body. The report was lodged at the thana by Kalu Ram constable and therein he mentioned Ghulam Mohammad as the assailant and the fact that he snatched the knife from the hands of the appellant on the spot.

3. Before the committing Magistrate the appellant denied having caused any injuries to Mohammad Ayub. He said that the knife did not belong to him. He admitted that the muffler was his. He ascribed the case against him to enmity with Kalu Ram constable and with the prosecution witness Yunis. Before the learned Sessions Judge he went to the extent of even denying to have gone to the cinema on the night of the occurrence. Nor did he give any explanation as to how Ayub received the injuries.

4. The case was committed to the learned Sessions Judge under Section 304, Penal Code. He converted the charge, however, to one under Section 302, Penal Code. He repelled the defence theory and believing the prosecution case recorded the conviction as above.

5. Learned counsel for the appellant has not seriously disputed the finding of the learned Sessions Judge that it was the appellant who caused the fatal injuries to Ayub. He, however, relied upon Section 100, Penal Code, and Exception 1 of Section 300.

6. So far as the right of private defence is concerned, we are of opinion that it is not available to the appellant. Reliance is placed upon Clause (4) of Section 100. According to it, the right of private defence of the body extends, subject to certain restrictions, to the extent of the causing of death if there is an assault with the intention of gratifying unnatural lust. The evidence on the record only shows that there was a demand on the part of Mohammad Ayub from the boy Laiq Ahmad to repay Rs. 3,000. If a creditor makes a demand and tells the debtor that he would not let him go unless his money is repaid, it can hardly be called an assault and certainly in this case there is no satisfactory proof that there was any intention in the mind of the deceased to commit any unnatural offence upon Laiq Ahmad. It is true that there is some evidence to show that Mohammad Ayub as well as the appellant were men of bad character. But from this general evidence of character, it is not permissible to draw the inference that on that particular occasion Mohammad Ayub wanted to take the boy Laiq Ahmad for the purpose of satisfying his unnatural lust. Section 100 does not apply to the present case.

7. The next question is whether Exception 1 of Section 300 is applicable. It provides that :

'Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any person by mistake or accident.' There are certain provisos to this Exception. Illustration (f) of this Exception is relevant for the purposes of this case. It runs as follows :

'Z Strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.'

The illustration shows that it is possible that grave and sudden provocation may be caused when one person strikes another. Now, in the present case there were certain aggravating circumstances. In open public on a main thoroughfare at a market place Ayub struck the appellant with a shoe on the face. It is well known that striking with a shoe is regarded as very humiliating. Naturally the appellant was provoked by receiving the shoe blow and the provocation was greater because of the place where the blow was given. In the circumstances of the present case, we are satisfied that there existed a grave and sudden provocation. It was sudden because the appellant did not expect that he would be so treated simply because of his intervention on behalf of Laiq Ahmad. It was grave because the blow was inflicted with a shoe in a public place and upon the face. We hold that Exception 1 of Section 300 applies to the present case and, in this view of the matter, the conviction under Section 302 is not sustainable. Section 304, Penal Code, applies and we convict the appellant under it.

8. As regards the sentence, we must take into consideration the nature of the injuries inflicted upon the deceased. Two of the stab wounds were on the chest and one was in the abdomen. We are of opinion that an imprisonment of ten years would meet the ends of justice.

9. The appeal is allowed in part. The conviction under Section 302, Penal Code, is set aside. The appellant is convicted under Part 1 of Section 304, Penal Code, and sentenced to rigorous imprisonment for ten years. The reference by the learned Sessions Judge for the confirmation of death sentence is rejected.