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Court : Allahabad

Decided On : Jul-27-1922

Reported in : (1923)ILR45All130

Judge : Grimwood Mears, C.J. and ;Piggott, J.

Appellant : Emperor

Respondent : Sipahi Singh and ors.

Judgement :

Grimwood Mears, C.J. and Piggott, J.

1. In this case five persons, caste-fellows and relatives, residents of village Diha, near Karchhana, in the southern part of this district, were tried before the Sessions Judge at Allahabad, on charges under Section 302 and Section 147 of the Indian Penal Code. The charge of rioting may be disregarded, more particularly in view of the fact that one of the accused persons, Sheoratan Singh, has been acquitted by the Sessions Court, on the ground that the evidence implicating him in the affair is not altogether satisfactory. The other four accused, Sipahi Singh, Sunder Singh, Bisheshar Singh and Bira Singh, have been convicted under Section 302 of the Indian Penal Code. The learned Sessions Judge, while admitting that the question of sentence is one of some difficulty, has passed sentence of death on Sipahi Singh, and submitted the record to this Court for confirmation of the same. He has passed the lesser sentence of transportation for life on the other three accused,

but has, at the same time, remarked that he would desire to recommend their case to the Local Government for consideration with regard to the exercise of the prerogative of mercy. The broad facts of the case are not in issue, although there was a considerable variation in general outline between the story told by the accused and that for the prosecution. We have been taken through the evidence on the record and, where the two versions differ, we have no doubt that the learned Sessions Judge was right in giving the preference to that put forward by the witnesses for the prosecution. It appears that Raghubar Singh and Ragho Prasad Singh, two brothers, neighbours of the accused, had impounded a number of goats belonging to the appellant, Bisheshar Singh. On the 23rd of March last, the day before the occurrence of the events referred to in the charge, the goats were released from the pound, and the evidence for the prosecution is that as Bisheshar Singh drove them home, he was using abusive language and declaring openly his intention to be revenged, by impounding forcibly any cattle belonging to Raghubar Singh or Ragho Prasad Singh wherever he might find them. On the following morning, according to the evidence of Ragho Prasad Singh he was grazing a number of cattle in a field where he had a perfect right to do so. Sipahi Singh and Sunder Singh came up from one direction. The other two accused, in the company of Sheoratan, the man who has been acquitted, came up from another. They had lathis in their hands. They overawed the witness by a display of force and drove off his cattle in the direction of the pound. The witness ran towards the village calling for his brother Raghubar Singh. The latter came up. There is some conflict of evidence as to whether he was armed or not. But the Sessions Judge has himself accepted the statement that he had at least a stick in his hand. At any rate when he came up to the accused and endeavoured to stop the wrongful and forcible impounding of his cattle, Sunder Singh and Sipahi Singh struck him to the ground. The witness says that the others also struck him after he had fallen, and the injuries to the back and on the buttock disclosed by the post mortem examination corroborate this statement. When the witness, Ragho Prasad Singh, protested, he was himself set upon and felled to the ground. This is substantially the story told in the first report and it is corroborated by several eye-witnesses, Raghunath Singh, Baij Nath Singh, Bandhu Singh, Baljor Singh and Mauji. Raghubar Singh was so seriously injured that he died the same day; Ragho

Prasad Singh received a number of injuries, but only one of them was technically grievous; still he had evidently' been subjected to a severe beating. The medical evidence shows that the injuries on the corpse of Raghubar Singh were serious; there were about eleven injuries on the body. The learned Sessions Judge has understated the number in summing up the case in his judgment, and three of these were on the head; the left parietal bone was fractured.

2. On this state of facts it has been contended before us that the learned Sessions Judge ought not to have found any of the accused persons guilty of the offence of murder. The argument is that it is not to be inferred that they intended to kill Raghubar Singh. The learned Sessions Judge has gone into this matter carefully in his judgment, and we are in thorough agreement with the general principles laid down by him. A similar case was before this Court in *Emperor v. Ram Newaz* (1913) I.L.R. 35 All. 506 and that decision contains, in our opinion, a correct statement of the law on this point. There was not, in the present instance, a sudden fight, in the heat of passion on a sudden quarrel. The accused persons were the aggressors from the beginning, and in carrying off to the pound cattle illegally seized by them and in making a violent attack upon a single man who endeavoured to interfere with their proceedings, they were behaving in an altogether outrageous and lawless manner. The nature of the injuries inflicted, and particularly the injuries to the head, justifies the inference that the persons who struck those blows intended, when striking them, to cause death. We are not disposed to interfere with the sentence passed upon Sipahi Singh. In cases like the present, where a number of men armed with lathis make & concerted attack upon another man and practically kill him on the spot, inflicting injuries to the head, the result of blows which must have been struck either with the intention to kill, or, at any rate, with the intention to cause hurt such as the strikers must have known to be imminently likely to result in the death of the person struck, we think it should be clearly laid down that, in the case of the ring-leader at least in such an assault, the penalty prescribed by the law as the proper penalty in cases of murder will be inflicted. As regards the remaining appellants we are prepared to endorse, for the reasons stated by him, the recommendation of the learned Sessions Judge to a certain extent. As in a case of this sort the Local Government expects this Court to pronounce an opinion regarding the proper sentence, in the event-of the

prerogative of mercy being exercised, we propose to do so. The result is that we dismiss the appeals of all the appellants.

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