

Tulli and anr. Vs. Emperor

Tulli and anr. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/456268

Court : Allahabad

Decided On : Sep-11-1924

Reported in : AIR1925All185; 85Ind.Cas.130

Appellant : Tulli and anr.

Respondent : Emperor

Judgement :

1. His Lordship after setting out facts as given above and dealing with the evidence proceeded as follows:

It has been strongly contended on behalf of the appellants that the statements of the witnesses who have resiled from their former statements, though admissible, are not satisfactory proof of the accused's complicity. Reliance has been placed on three cases reported in Queen-Empress v. Jeochi (1898) 21 All. 111, Queen-Empress v. Nirmal Das (1900) 22 All. 445 and Emperor v. Dwarka Kurmi (1906) 28 All. 683. It was conceded in all those cases that previous statements of the witnesses made before the Committing Magistrate were admissible though of course ordinarily they should not be acted upon if the witnesses have gone back upon them and there is no evidence to corroborate them. It was nowhere laid down that such statements are not evidence and can never be acted upon. We may also point out that in the amended Code of Criminal Procedure, Section 288 now stands as follows:

The evidence of a witness duly recorded is the presence of the accused under Chapter 18 may in the discretion of the Presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act'. The words have been newly added. It is quite clear that if we are satisfied that the previous statements made by the witnesses are the true statements and the statements made subsequently are false, then it is open to U3 to rely upon the previous statements for the purpose of upholding the conviction of the appellants.

2. Having regard to the state of evidence and the opinion already expressed, we have no doubt in our mind that Badri and Tulli who were partners in the cultivation of Man Singh and who, on our finding, were in the house that night, did go inside the room where Mt. Saraswati was sleeping and came out with Man Singh who had a gandasa in his hand. The murder was obviously committed during that interval.

3. It is next to be seen whether on this finding it is possible to convict the appellants under Section 302. It has been urged that there is really no evidence that they took part in the murder. It is also urged that in some of the previous statements of the witnesses it was said that Man Singh admitted that he himself had killed the deceased. We are prepared to assume that there is no direct evidence on the record to suggest that the accused physically assisted Man Singh in murdering the deceased. One cannot, however, get over the fact that they did go in with Man Singh and awakened Mt. Gayasi and asked her to go out. They never used to sleep in the house and had stayed there for the night. They were undoubtedly present at the time when and at the place where the murder was actually committed. Even if they did not actively assist Man Singh by, for instance, holding Mt. Saraswati, they must have by their very presence given moral support and abetted. It is impossible now to find out what actually happened inside the room, as Man Singh is absconding and the only other person who could have given evidence against the appellants is now dead. But having regard to the circumstances mentioned, we are satisfied that it must be held that the accused were guilty of the murder just as much as Man Singh was. Even if they did not take part in the actual murder, they would under Section 114 of the Indian Penal Code

be deemed to have committed such act or offence.

4. As we have already remarked, the murder was a cold-blooded and altogether an unjustified one and was carried out in a most brutal manner. We are accordingly of opinion that the accused parsons must be convicted under Section 302 and sentenced to death.

5. We accordingly dismiss the appeal and uphold the conviction of the appellants under Section 302 of the Indian Penal Code, but enhance the sentence to one of death and we order that both the accused be hanged by the neck till they are dead and that this order be carried out according to law.

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