

Chhotay and ors. Vs. Emperor

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Court : Allahabad

Decided On : Apr-14-1930

Reported in : AIR1930All596

Appellant : Chhotay and ors.

Respondent : Emperor

Judgement :

Boys, J.

1. Six men appeal from a conviction under Section 304, I.P. O., and a sentence thereunder of three years' rigorous imprisonment. The facts briefly are that an amin assisted by a karinda, the karinda's master and accompanied by the police and some servants who were probably employed as lathials of the zamindar went to attach a crop. The party went in some force because they had information that the attachment would be resisted with violence. The circumstances are of course peculiar to this particular case, and it is, there-fore, unnecessary to detail them in view of the fact that while I have been asked to read the whole judgment carefully I have not had any of the evidence laid before me. The findings are quite clear. The party intending to effect the attachment was resisted with violence. The zamindar was struck to the ground and received several injuries. Thereupon, and I have no doubt practically instantly, the zamindar's men rushed on his assailants and severely beat two, with some minor injuries to one or more. The two men severely

beaten were the man whose crop was to be attached and his father, they being also the two who are said to have commenced the attack on the attaching party. Both these two severely injured men have died, and the question is what is the right view to take of the responsibility of the present appellants. The Judge has held that they committed their acts on grave and sudden provocation. He has refused them the benefit of a plea of the right of self defence because he says that there is nothing to show that the attacking party were going on to do anything further. With that view I do not think that I should agree. The whole of the circumstances would indicate that the fact that the assailants did not actually succeed in assaulting anyone but Azhar Husain, the zamindar, does not show anything in the light of the fact that the counter-attack by the zamindar's men in defence of the zamindar was probably instantaneous. I should, therefore, have been inclined to give the accused the full benefit of their plea but for the fact that they have undoubtedly exceeded their right in view of the number of injuries inflicted on Ghhattar. But taking all the facts into consideration I do not think that a sentence of three years' rigorous imprisonment was called for. It is in my view always desirable to make every effort to discover who was responsible for the initiation of violence and to punish such person heavily while dealing more leniently with the man whose violence was provoked, even if he exceeded the limits of his rights. In this case I would have given a sentence of six months' rigorous imprisonment. The accused have already suffered that and a little more. I, therefore, while maintaining the conviction, reduce the sentence to the period already undergone. The six appellants will be forthwith released.