

Empress of India Vs. Fox

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1880)ILR2All522

Judge : Robert Stuart, C.J.

Appellant : Empress of India

Respondent : Fox

Judgement :

Robert Stuart, C.J.

1. This case was first brought to the notice of the Court by a letter from the Government of these Provinces, dated the 11th November last, in which letter it was inquired 'whether in the opinion of the High Court the judgment of the Magistrate was legal and equitable.' On reading this letter it occurred to me that, instead of returning an answer to it in the same form, it would be better for the Court to take judicial cognizance of it and to dispose of it under Section 297 of the Criminal Procedure Code. That course was adopted and the record sent for. I should state that I adopted this course of action in order to avoid the discussion and inconvenience experienced by the Government and by this Court in the well-known Fuller's Case, and also in order to avoid the suggestion that was made in that case that the Court, although consulted by the Government in its judicial capacity, had not heard and determined the matter in the usual way, but simply by

letter in reply to the Government.

2. The case has now according to the course of the Court come on for hearing and disposal by myself, both prosecutor and accused being professionally represented, the Government by Babu Dwarka Nath Banarji, the Junior Government Pleader, and the accused by Mr. Chatterji, barrister and advocate of this Court. Both these gentlemen submitted their arguments very fairly, although it did not appear that there was any serious difference between them as to the legal aspect of the case. I have very carefully considered all that they advanced, and I have also very anxiously perused and examined the evidence, and I have arrived very clearly at the conclusion that, in the first place, the conviction of Fox under Section 323 of the Indian Penal Code was right, and that the sentence of a fine of Rs. 200, or, in default, one month's rigorous imprisonment, was one which it was within the discretion of the Magistrate to order, although I myself would have been satisfied with a penalty of less severity. But the fine has I believe been paid, and under all the circumstances of the case I am not disposed to interfere with the sentence by reducing it now.

3. I observe it is suggested in the Police report that the offence was one under Section 304 of the Indian Penal Code, viz., culpable homicide not amounting to murder, that is, homicide committed without premeditation. But in order to a conviction under such a charge, it is incumbent on the prosecutor to prove that the assault or blow which caused death was committed or inflicted so recklessly as to show that the offender was utterly regardless of the consequences of his act. But in the present case the evidence falls considerably short of such a degree of criminality: it simply amounts to this, that very early on the morning of the 30th August last Fox, dissatisfied and irritated by the lazy and inefficient manner in which the punkha cooly Tulsia was managing the punkha, pulling it slowly and nodding in a sleepy manner while doing so, went up to him and struck him one or more blows, on what part of his person does not very clearly appear, whether on the head or on the side, or other part. One thing however is clear, and is not disputed, that Tulsia's death was the result of the injuries he had so received. But on a fair view of the evidence it would in my view be unreasonable to hold that Fox was actuated by the reckless vindictiveness contemplated by Section 304. He

simply under a feeling of annoyance at the inefficient manner the punkha was being pulled by Tulsia, and under what may be called a sudden impulse, struck him in the way described. The blows were not heavy or severe, and if Tulsia had been in a healthy condition of body, it is probable that he would not have materially suffered from them. But he was not in a healthy state. The evidence of Doctor Hilson shows that his spleen was in a very diseased condition, more than double the natural size, and thus the weakness of the poor man and his so quickly succumbing is explained. And I observe that the Police report which states Fox's offence as one falling under Section 304, Indian Penal Code (culpable homicide not amounting to murder), yet strangely admits that Fox 'had only seen the deceased for the first time on the morning he struck him (30th August), as before that he was serving with Sergeant Justice of the Government Railway Police'. Doubtless the blow or blows accelerated Tulsia's death, but that such a result was contemplated or was carelessly disregarded by Fox as possible, it is in my opinion on the evidence impossible to believe. Fox appears merely to have acted from a sudden feeling of annoyance, and to have vented that feeling by an assault, which on a healthy person would have been attended with no injurious consequences.

4. I cannot conclude this judgment without noticing the allusion the Magistrate makes to the recorded opinion of the Court in Fuller's Case. He refers to paragraphs 17 and 18 of the Court's letter in that case, which deal with the procedure which it is the duty of a Magistrate to follow. But I may be permitted to refer to other portions of that same letter and of my own minute which appear to me very clearly to expound the law to be applied to the present case. In paragraph 24 of the Court's letter in Fuller's Case it is stated that 'By the law of India, as by the law of England, a person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death'. Nevertheless, every causing of death does not amount to the offence of culpable homicide. Unless it be proved that a person who has caused the death of another caused death with the intention--(i) to cause death; (ii) to cause bodily injury likely to cause death; (iii) to cause such bodily injury as he knew to be likely to cause death to the person to whom the harm is done; or (iv) to cause bodily injury to any person sufficient in the ordinary course of nature to cause death with the knowledge (v) that he was likely

by his act to cause death; or (vi) that his act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death--the person who has caused death cannot by the law of India be convicted of culpable homicide of either description'. And in paragraph 25 of the letter it is explained:-- 'Nor can a person be convicted of the offence of voluntarily causing grievous hurt, unless it be proved that he caused one of the descriptions of hurt defined in the Code as grievous hurt, either by means whereby he intended to cause such hurt, or by means which at the time of employing those means he knew or had reason to believe to be likely to cause it (Indian Penal Code, Section 39 *).' And the Court then goes on to remark in paragraph 26 that 'in Fuller's Case there was no evidence that he had committed any of the kinds of hurt defined in the Code as grievous hurt; and although a person is by law presumed to know and to intend the ordinary and probable result of his acts, the result could hardly be declared ordinary or probable; while the circumstances rebutted the presumption of intention or knowledge to commit either culpable homicide or grievous hurt.' The same principle as to motive and intention is also explained in my own minute in Fuller's Case. In paragraph 23 of that paper I say, 'It would appear from the medical evidence that the spleen of the deceased was in such a diseased state that very slight violence, either from a blow or fall, would have been sufficient to have caused death. Indeed, it is plain that a mere accident to the man, such as his tripping while walking or running, might have had this fatal result; but that there is nothing in the case to show that such extreme and perilous sensibility of body was known to, or could have been reasonably suspected by Mr. Fuller; and his guilt or criminal responsibility would have been the same, and neither more nor less, if Kathwaru had not died. The letter of the Government of India goes on to state that 'the death of Kathwaru was the direct result of the violence used towards him by Mr. Fuller ', and His Excellency in Council observes that 'the High Court assumes the connection between the two events as being clear', but adding 'yet, on reading Mr. Leeds' judgment, he does not find that gentleman ever considered the effect, or even the evidence of this connection'. The portion of the Court's letter (i.e. the Court's first letter to the Local Government) thus referred to is in these terms:--'The medical evidence shows that the spleen was in a diseased condition; that death was caused by the rupture of the spleen; that this injury might have been caused

by moderate violence or by a fall; and that there were no external marks of injury on the body. Under these circumstances, it appears that no great violence was used, and that the accused neither contemplated nor could have foreseen that severe hurt would have resulted from the degree of violence exerted by him, much less that it should have been followed by the lamentable result of death.' It will be observed that Mr. Fuller's not very violent blow and Kathwaru's death are here stated as connected facts but not in such a way as to show Mr. Fuller's culpability in regard to the death. In fact, it is unnecessary to dwell on the mere fact of the connection between the two circumstances, the material and vital question being, not whether the death did in fact result from the blow, but whether Mr. Fuller had such a guilty knowledge of the probable consequences as to make him really responsible for the fatal occurrence. But there is nothing in the record to show any such guilty knowledge on his part or that he intended to occasion a hurt which would ordinarily or probably cause death, and every circumstance ought to have been distinctly proved, and not left to any kind of inference or suspicion.' And with respect to Mr. Leeds' judgment I observed 'that it distinctly states the fact of the blow or assault, as it may be called, and also Kathwaru's ultimate death, but it does not state, and, with great respect and deference, I submit it very properly does not state, these as necessarily connected facts against Mr. Fuller in the way of measuring his culpability. '

5. The law thus laid down appears to me exactly to apply to the present case. It is impossible to conclude that Fox could have had in view the cooly's death as a probable or even possible consequence of his acts, and the measure of his culpability is therefore not that fatal result, but only the blows themselves, inflicted, as these were, suddenly, under an impulse momentarily excited and not arising from any actual malice against the man.

*'Voluntarily.'

[Section 39:--A person is said to cause an effect 'voluntarily' when he causes it by means, whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.]

