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Court : Allahabad

Decided On : Jun-20-1923

Reported in : (1923)ILR45All727

Judge : Ryves and ;Daniels, JJ.

Appellant : Emperor

Respondent : Umed and ors.

Judgement :

Ryves and Daniels, JJ.

1. Niranjana, Banwari, Ranjit and Umed were committed to the Court of Session, at Mainpuri, on charges under Sections 148 and 302, Indian Penal Code. The learned Sessions Judge convicted Umed under Sections 148 and 304, Indian Penal Code, and convicted the remainder under Sections 148 and 325. He sentenced Umed to transportation for life under Section 304 and the other three to five years' rigorous imprisonment under Section 325. Umed appealed to this Court. On his appeal being admitted by a learned Judge of this Court, notice was sent to Niranjana, Banwari and Ranjit to show cause why the conviction should not be altered in their case and the sentence enhanced accordingly. Niranjana has since died in jail. The notice has been served on Banwari and Ranjit and no cause is shown on their behalf. We, therefore, take up the case of Umed on appeal and the case of Ranjit and Banwari in revision.

2. It is proved by the clearest evidence that Bhopal, an elderly Kachhi of Narayanpur, was mercilessly beaten by the four accused and one Gannu who is absconding. There had been litigation between Bhopal on the one side and Niranjani and Banwari, who are brothers, on the other, in which Bhopal had been entirely successful, with the result that there was the bitterest enmity against him on the part of Niranjani and Banwari. Only very shortly before this occurrence Bhopal had obtained a decree under Section 9 of the Specific Relief Act against them and was then putting his decree into execution. Bhopal was taken to the hospital at Mainpuri where he died on the 13th of January. The medical evidence shows that he was most mercilessly beaten and his skull was fractured and eleven ribs were broken.

3. The evidence against the accused is overwhelming. It consists of several eye-witnesses who saw 'the assault in broad daylight and who knew all the accused. In the first report, which was made on information given by Bhopal himself, all five are named. The learned Sessions Judge has come to the conclusion that on the evidence the apparent intention of the accused was to cripple Bhopal and not to kill him. He gathers this from the statements of the witnesses who say that the accused were saying that they were beating Bhopal as they would not leave him in a condition to fight a case in Mainpuri. We should have drawn a very different inference from these remarks, but it seems to us quite unnecessary to do so. There is no doubt that all the five accused joined in beating Bhopal, when he was on the ground with lathis and they inflicted such serious injury to him that he died two days afterwards. They must have known that at the least they were causing injury which was likely to cause death, and if death resulted, they are all guilty of murder. In such cases it is immaterial by whose lathi the fatal injury is inflicted. The learned Judge has drawn a distinction between Umed and the other three accused before him, a distinction which we are entirely unable to appreciate. It may be that Umed inflicted the first blow or even the=blow on the head but that does not distinguish his case from that of the others. They all joined in the attack and the death was the result of the beating inflicted by them' all jointly. The learned Sessions Judge has relied on the case of Emperor v. Bholu Singh (1907) I.L.R. 29 All. 282. That case has not been followed in several later decisions and can no longer be treated as good law; vide Emperor v. Ram Newaz (1913) I.L.R. 35 All.

506, Emperor v. Hanuman (1913) I.L.R. 35 All. 560 and Emperor v. Gulab (1918) I.L.R. 40 All. 686. In this case 'the decision of a single Judge in Emperor v. Chandan Singh which followed Emperor v. Bhola Singh (1907) I.L.R. 29 All. 282 was expressly overruled. A similar decision reported in Dhian Singh v. King-Emperor (1912) 9 A.L.J. 180 was dissented from in Emperor v. Hanuman (1913) I.L.R. 35 All. 560. The latest decision on the point is that of Sipahi Singh v. Emperor (1912) I.L.R. 45 All. 130. In our opinion all the accused ought to have been convicted of murder, and if they had been so convicted and sentenced to death, we should not have interfered. As it is, we alter the conviction in the case of Umed from Section 304 to Section 302 and in the case of Banwari and Ranjit from Section 325 to Section 302. We maintain the sentence of Umed of transportation for life and enhance that of Banwari and Ranjit to transportation for life with effect from the 9th of April, 1923. The sentence under Section 148 will remain and run concurrently.

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