

Emperor Vs. Rahmat and ors.

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Court : Allahabad

Decided On : Apr-21-1915

Reported in : AIR1915All378; 30Ind.Cas.138

Judge : Chamier and; Piggott, JJ.

Appellant : Emperor

Respondent : Rahmat and ors.

Judgement :

1. This is a Government appeal against an order of acquittal and is brought under the following circumstances. There were four accused persons, Rahmat, Moti, son of Pir Bakhsh, Jhandu and Moti, son of Khilari, all of the Banjara caste, and the case against them was that they had beaten with lathis their caste-fellow Pir Bakhsh, inflicting serious injuries, which, as a matter of fact, resulted in the death of the said Pir Bakhsh. The Magistrate who inquired into the case, for reasons given by him, framed a charge under Section 325, Indian Penal Code, but committed the accused persons for trial before the Court of Session. The case unfortunately came before a Sessions Judge of very limited experience. He rejected an application made OTI behalf of the prosecution for amendment of the charge into one under Section 304, Indian Penal Code, or Section 302, Indian Penal Code, and then permitted the case to be compounded upon an arrangement come to between the accused persons and, the widow of the deceased. He thus acquitted the accused without taking any evidence at all. The order is obviously

illegal. An offence punishable under Section 325, Indian Penal Code, is, no doubt, compoundable with the permission of the Court, but it is compoundable by the person to whom the hurt was caused. In this case the person to whom the hurt was caused was dead and the case was certainly not compoundable by his widow.

2. In dealing with this matter to day we are placed in a certain difficulty. Moti, son of Pir Bakhsh, has been arrested and has had notice of to day's hearing. He has been represented before us by Counsel. The other three accused persons cannot be found and are presumably absconding. The warrant issued by this Court for their arrest has not hitherto been executed. Notices of to day's hearing were issued to them and they have been served on their near relatives, but they themselves cannot be found. The Government Advocate, who appears in support of the appeal, informs us that he is willing to withdraw the appeal as against the three absconding accused, provided this Court is prepared to take up the case so far as they are concerned in the exercise of its revisional jurisdiction. The case is a very clear one and there is no question of convicting any of the accused on evidence upon the record. Over, and above setting aside the order of acquittal, all that we could do would be to direct these persons to be tried. Under these circumstances we think that the three absconding accused have been given a reasonable opportunity of being heard to-day in their defence, within the meaning of the 2nd clause of Section 489, Code of Criminal Procedure, and that we can take up the question as regards them in the exercise of our revisional jurisdiction.

3. We regard to Moti, son of Pir Bakhsh, therefore, we so far accept this appeal that we set aside the order of acquittal passed in respect of the said Moti and direct that he be put on his trial before the Court of Session. As regards Rahmat, Jhandu and Moti, son of Khilari, the Government appeal against their acquittal is withdrawn. Taking up the matter in the exercise of our revisional jurisdiction we set aside the order acquitting these three men, which is clearly an illegal order. We leave the local authorities to take such steps with regard to the prosecution of these three men as they may consider suitable.