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Court : Allahabad

Decided On : Oct-23-1918

Reported in : AIR1918All65; 48Ind.Cas.502

Judge : Piggott and ;Walsh, JJ.

Appellant : Dulli

Respondent : Emperor

Judgement :

1. In this case Dulli Kurmi was tried upon a number of charges, one of which was a charge of robbery, incorrectly framed under Section 397 of the Indian Penal Code, which section, as this Court has repeatedly remarked, does not in itself constitute any offence but merely conveys a direction to the Court in the matter of sentence in respect of certain aggravated forms of robbery or dacoity, while there was also a charge of murder under Section 302 of the Indian Penal Code. The facts deposed to by the prosecution witnesses are as follows: The complainant Sehdul was sleeping in his field to watch over the crop which was ripe or ripening. Shortly before dawn, three men entered the field and proceeded to plunder it of its crop. Sehdul came upon them after they had out a certain amount of the crop and had made it into bundles for convenience of removal. The thieves set upon him and he shouted for help. He himself received severe injuries from the lathis of the thieves and his neighbour Charittar, who pluckily came to his rescue, was felled to the ground and received such injuries that be died on the spot. The medical evidence

shows that Charittar's head had been terribly shattered by a number of blows, which the evidence proves must have been inflicted by the lathis of the thieves. Sehdul's evidence is corroborated by Muhammad All and Gopi; each of these men names the thieves who committed this offence and positively identifies the accused Dulli as having been one of them. There was practically no defence, beyond a bare denial and a plea of alibi wholly unsupported by evidence. Moreover Dulli was nowhere to be found when the Police enquiry into this matter was taken up, and he has offered no reasonable or credible explanation of his absence from his home and from the neighbourhood for several months following the affray in' which Charittar lost his life. He has appealed against his conviction by the Sessions Court, but his participation in the offence or offences committed under the circumstances above stated is established by overwhelming, evidence. The learned Sessions Judge upon this evidence, which he accepted as true, came to the conclusion that the thieves could not be convicted of robbery, because the hurts caused to Sahdul and Charittar had not been inflicted in carrying away or in attempting to carry away the crop which had been out from Sehdul's field. He may be justified in his opinion that when they inflicted these injuries, the thieves were merely resisting their own arrest and had abandoned any intention of removing the stolen property, and in that case no conviction of robbery can be recorded. Further, the learned Sessions Judge, by a somewhat (involved process of reasoning into which it does not seem necessary for us to enter in detail, arrived at the conclusion that the men who inflicted these injuries upon Charittar neither intended to cause his death nor knew that they were likely to do so. He has accordingly acquitted Dulli of the charge under Section 302 of the Indian Penal Code and has convicted him of offences punishable under Sections 325 and 382 of the same Code. The sentences which he has passed are substantial; but nevertheless the learned Judge of this Court before whom his petition of appeal came up for consideration was of opinion that the order of acquittal on the charge of murder required to be considered by this Court in the exercise of its revisional jurisdiction, Notice has gone to Dulli to show cause and the whole matter is now before us.

2. On the facts of the case we are unhesitatingly of opinion that Dulli was guilty of the murder of Charittar and liable to punishment under Section 302 of the Indian

Penal Code. The nature of the injuries observed at the post mortem examination puts it beyond doubt that the men who inflicted those injuries intended at the time to cause death, or such injury as they must have known to be likely to result in death. The mere fact that it was impossible for the witnesses to say which of the three robbers inflicted any particular injury on the person of the deceased is, under the circumstances of this case, wholly irrelevant. They were all three of them striking him with lathis and between them they caused his death in the manner already stated. They are all of them equally guilty of the offence of murder.

3. We have had to consider one further question, namely, the limitation imposed upon the revisional jurisdiction of this Court by the fourth clause of Section 439 of the Code of Criminal Procedure. There is some difference of legal opinion on this point. There is no doubt whatever that, when a trial has ended in the complete acquittal of the accused person, it is not open to this Court in the exercise of its revisional jurisdiction to convict him of any offence. The utmost that this Court can do, in the absence of an appeal against the acquittal by the properly consisted authorities, is to order a new trial. It is, however, open to argument whether this clause is intended to apply to oases in which an accused, who has been tried upon more than one charge under the provisions of Section 235 or 236 of the Code of Criminal Procedure, has been acquitted upon one charge but convicted upon another. In the present case this question does not arise for determination. We have before us an appeal by Dulli against his conviction, as well as the notice of enhancement issued by this Court. It is, therefore, open to us to exert case any of the powers conferred by Section 423 (1) (b) of the Code of Criminal Procedure, as well as any of the powers specified under Section 439 of the same Code. It has repeatedly been held by various High Courts that an appeal against the conviction opens out the entire case, and that the Appellate Court, being empowered to alter the finding by Section 423 (1) (6) above referred to, may record a conviction in respect of an offence of which the trial Court has found the accused not guilty. It is quite true that under this section, considered by itself, the finding can only be altered without enhancement of the sentence; but the power to enhance the sentence is separately conferred upon this Court by Section 439 of the Code of Criminal Procedure, It follows that in the case now before us there can be no question that we have authority to record a conviction under Section 302 of the

Indian Penal Code and to pass an appropriate sentence. Accordingly we dismiss the appeal of Dulli. We alter the conviction of the said appellant from one under Section 325 of the Indian Penal Code to one under Section 302 of the same Code, and we enhance the sentence by passing upon Dulli the minimum sentence which the law authorises us to pass in respect of the offence of which we have found him guilty; that is to say, we sentence him to undergo transportation for life. This sentence will run concurrently with the sentence passed by the learned Sessions Judge on the conviction under Section 382 of the Indian Penal Code.

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