

Wazira Vs. Emperor

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Court : Allahabad

Decided On : Oct-24-1939

Reported in : AIR1940All113

Appellant : Wazira

Respondent : Emperor

Judgement :

Ismail, J.

1. Wazira appeals from his conviction and sentence under Section 307, I.P.C. The prosecution version is that on the night between 21st and 22nd June 1938, Jagdish Chander, Manager of Rai Sahib Prem Nath's dairy, his wife and brother were sleeping in the verandah of their house when a number of persons came armed with lathis and attacked Jagdish Chander. Mt. Shanti Devi was awakened by the noise but was given a blow on the legs by one of the culprits. She raised an alarm which roused her brother-in-law who got up but was attacked. The neighbours hearing the noise rushed to the spot but could not capture any of the assailants as before their arrival the assailants had decamped. Only Wazira, the appellant, could be identified by Mt. Shanti Devi and her brother-in-law. Gentleman Cadet Mahanti happened to be staying in a house adjoining that of Jagdish Chander. He also reached the place of occurrence soon after the departure of Wazira's party. He found Jagdish Chander bleeding profusely and in an

unconscious state. The police was informed by Cadet Mahanti. The Sub-Inspector arrived about two hours after the occurrence. The victim was sent to the hospital and the investigation of the offence was taken in hand. Only Wazira could be proceeded against as no one had identified his companions. Wazira was well known to Jagdish Chander and his family. It appears that Wazira had taken a substantial advance from Rai Sahib Prem Nath on condition of supplying milk. Rai Sahib Prem Nath has a contract to supply milk to the Indian Military Academy, Dehra Dun. The aggregate value of milk supplied annually runs up to about a lac and a half. Wazira failed to supply the contracted amount of milk and the matter therefore had to be reported by Jagdish Chander to Rai Sahib Prem Nath who brought a suit for the recovery of the amount advanced by him. An application for attachment before judgment was made by the plaintiff and the Court granted the application on 21st June 1938. In the ordinary course this order would have been executed the following day and the occurrence took place on the intervening night. This is said to be the motive for the crime.

2. The appellant denied the charge and stated that he has been prosecuted on account of ill will. He admitted that he had displeased Rai Sahib Prem Nath and his manager because he did not fulfil his contract. He admits that he removed his buffaloes from his residence and that he owed some money to Rai Sahib Prem Nath. He alleges that he has been implicated on account of suspicion.

3. The Court below upon a consideration of evidence was satisfied that Wazira was one of the assailants of Jagdish Chander. Jagdish Chander himself lost consciousness on receiving injuries and could not identify any one. The evidence of identification is confined to two prosecution witnesses only, namely Mt. Shanti Devi and Partool Chander. They state that they identified the appellant in the moonlight. Partool Chander states that he had seen Wazira a few days earlier at the house of Rai Sahib Prem Nath and thus came to know him. It is proved from evidence that it was a moonlit night. The assault was committed at about 1-30 A.M. In the first information report the appellant is named and a detailed account of the assault is narrated. Cadet Mahanti states that the name of Wazira was given by the witnesses immediately on his arrival to the scene of occurrence. There is absolutely no reason to doubt the testimony of the prosecution witnesses. It is

argued that Cadet Mahanti did not name the assailant when he telephoned to the Sub-Inspector. Cadet Mahanti explains that his immediate object was to render assistance to the victims rather than move the police to take action against the culprits. Cadet Mahanti is a young man of good position and is in no way connected with the complainant. I see absolutely no reason to doubt his explanation. Having regard to the convincing nature of the prosecution evidence I have no hesitation in agreeing with the conclusion of the learned Sessions Judge.

4. The next point stressed by learned Counsel is that no charge under Section 307 I.P.C., has been established. For the application of the aforesaid Section, it is not necessary that the injury capable of causing death should have been actually inflicted. 'Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death he would be guilty of murder, is liable to punishment under Section 307 I.P.C. If the injury is actually inflicted the nature of such injury may be of considerable assistance in arriving at the finding whether the accused has the intention of causing the death of the victim. In the present case Jagdish Chander received four injuries. Three of them were on the head. Major Fraser in his statement says: 'The injuries were simple but they may be classified as dangerous.' In cross-examination he stated that the injuries were not likely to be fatal as they were. He also stated that every head injury going bone deep is dangerous. Although the injuries according to the medical evidence were simple but they became grievous because the sufferer during the space of 20 days was unable to follow his ordinary pursuits.

5. The question for determination is whether on the material available on the record the conviction under Section 307 can be sustained. The evidence of prosecution witnesses shows that the assailants were armed with lathis only. Only Wazira was seen striking Jagdish Chander with a lathi. If the intention of the assailants was to cause the death of Jagdish Chander it is manifest that they could have inflicted far more serious injuries than they actually caused. Every injury on the head cannot be considered capable of causing death nor does every lathi blow on the head be considered fatal. From the conduct of the assailants it cannot be inferred that the assailants had the intention of causing the death of Jagdish Chander. In my opinion the liability of an accused must be limited to the act which

he in fact did and should not be extended so as to embrace the consequences of another act which he might have done but did not. The appellant, in my judgment, is guilty of an offence under Section 325 I.P.C., and not under Section 307 I.P.C. Whatever may be the appropriate Section it is manifest that the offence was a very serious one. The appellant and his associates conspired to take their revenge in a cold-blooded manner. Under the circumstances no indulgence can possibly be shown to the appellant. In the result I allow the appeal to this extent that the conviction and sentence under Section 307 I.P.C. is set aside and in substitution thereof the appellant is convicted under Section 325 I.P.C., and is sentenced to three years' rigorous imprisonment.

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