

Khelawan Vs. King-emperor

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Court : Allahabad

Decided On : Jul-26-1926

Reported in : AIR1927All104

Appellant : Khelawan

Respondent : King-emperor

Judgement :

1. This is an appeal by one Khelawan Chamar from a conviction under Section 302 of the Indian Penal Code and a sentence of transportation for life and a conviction under Section 328, of the Indian Penal Code and a sentence of seven years' rigorous imprisonment, which would, of course, run concurrently with the sentence of transportation for life. The convictions and sentences have been arrived at in consequence of the act of the appellant in giving powdered dhatura seed in some sattu, possibly with the addition of some gur, to two men Jaichu and Baran.

2. The facts of the case are very clearly set out in the judgment of the trial Court. It is the usual story of greed to obtain possession of a few rupees which were in the possession of Baran. With the usual sort of introductory conversation and proposals to obtain the confidence of his victims the appellant succeeded in inducing them to partake of some 'sattu' which he had with him. Then he disappeared on the pretext of going to case himself, presumably with the intention of returning later. As to whether he did return, there is no evidence as Jaichu and

Baran suspecting that Khelawan might be a thug left the place. An hour or two after these two had partaken of the 'sattu,' of which Khelawan himself had refused to take any share on the ground that he was suffering from dysentery, Jaichu, the principal prosecution witness in this case, began to feel ill and shortly afterwards Baran was taken ill. Nothing more was heard of them until the next morning a chaukidar on his rounds found Baran dead lying in some water and Jaichu apparently unconscious and rolling in pain. The chaukidar took the necessary steps to have Jaichu taken to hospital. He was taken to the Mau hospital where dhatura poisoning was diagnosed and he was let out upon his recovery after some three or four days. The viscera of Baran was sent to the Chemical Examiner, and it was established that he had died of dhatura poisoning.

3. Jaichu narrated the whole affair from the beginning up to the time when he himself was taken ill. There is nothing whatever in his story to lead us to doubt that he is telling the whole truth. No enmity against him whatever is even alleged by the appellant. His story is supported by witnesses who saw Khelawan in the presence of Jaichu when he was on the way to buy the gur. There is the shop-keeper who sold the gur to him and at least one witness who saw them together, that is Baldeo. The prosecution witnesses identified the accused in jail on the 23rd of February 1926, and there appears no reason for suspecting the genuineness of the identification then carried out. There is one point which we may mention. There is no evidence on the record that we have been able to find or to which counsel for the appellant and the Government Pleader have been able to draw our attention to show whether Jaichu made any statement of any sort to anybody as how he came to be poisoned, between 4-30 p.m. on the 21st of December 1925 when he regained consciousness in the hospital, and the 24th of December 1925, when he made his first report. It appears incredible that on the 21st, 22nd and 23rd, while he was apparently fully conscious in hospital, he should have had no conversation with anybody. It is true that anything he might say then would not be substantive evidence in itself, but it would have been, if what he said was in accordance with his present story, a valuable corroboration of his first report.

4. As it is we are left in ignorance of the nature of any declaration which Jaichu may have made in hospital or between the time of his leaving the hospital and

making the report at the police-station. We think that the learned Judge would have been well advised to endeavour at the trial to get some information on this point. We do not think, however, that this lacuna in the evidence throws any reasonable doubt on the genuineness of Jaichu's story, and it is on his story in the main that the case must stand or fall. We see no reason to suppose that there was anything whatever in the nature of a conspiracy to implicate the accused falsely. The appellant alleges enmity with Tengri but has entirely failed to prove it. He has moreover himself taken up three different stands in the different statements and memoranda of appeal that he has made.

5. We think that the conviction was beyond doubt a right one and we also agree as to the propriety of the sentence. Notice has been issued to the appellant to show cause why his sentence should not be altered from one of transportation for life to the death penalty. We do not, however, consider it necessary to enhance the sentence. It must not be understood for a minute that we consider that the death penalty would not be appropriate in some cases where death is brought about by dhatura poisoning, for instance, it was certainly the most appropriate sentence in the case reported in *Jeoli v. Emperor* [1917] 39 All. 161. There it was quite clear that the intention of the accused was not merely to stupefy but to get rid of her husband, and it was held that the only appropriate sentence was the capital sentence, even though the husband survived and the person who died was not the person whom the accused intended to kill. In that case the mere stupefying of the intended victim would have served no purpose. In the present case there can apparently be no doubt that the intention of the accused was certainly primarily only to stupefy his victims and to come back when the poison had begun to take effect and rob them. We do not see any ground for holding that he intended to bring about their death. It can, of course, be urged that he must at least have had knowledge that he was likely to cause death, and we think he undoubtedly had such knowledge and that the conviction under Section 302 was correct. There are, however, degrees of knowledge and degrees of likelihood, and, while in a case slightly different to this it might be that the capital sentence would be appropriate, in the present case we do not think that it is called for. We, therefore, see no reason to enhance the sentence. For the rest the appeal is dismissed and the accused will serve his sentences under Sections 302 and 328 of the Indian Penal

Code.

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