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Court : Allahabad

Decided On : Nov-30-1928

Reported in : AIR1929All160

Appellant : Parshadi and ors.

Respondent : Emperor

Judgement :

1. The facts of this case are set out in the judgment of Mr. Ardagh, the Sessions Judge of Shahjahanpur, very clearly and there is only one comment in regard to the views expressed by him that we shall have to make.

2. The facts are very clear, and if there is any point apparently established by the evidence for the prosecution which does not in fact represent the truth the accused have only themselves to blame for it. They have set up foolish defences of alibi, in one case supported by evidence that is most probably fabricated. We have therefore no assistance from them to enable us to determine exactly what happened. It is clearly established by the evidence for the prosecution that certain residents of village Gour went to fish in a tank within the limits of 'village Sherapur. While they were fishing they were deliberately attacked by certain of the villagers of Sherapur who pretended to think that they had a grievance against the Gaur villagers for fishing in the tank and who were determined to take away from the Gaur villagers the fish which they had caught. In the course of the assault committed on the Gaur villagers Jamal and Chandan who stood their ground, were

injured, Chandan fatally. All the six appellants have been sentenced to transportation for life under Section 302 read with Section 149.

3. We have already described the grievance of the Sherapur villagers as an alleged grievance and we have so described it because all the evidence indicates that the Gaur villagers had at least a joint right, if not the sole right, to fish in the Sherapur tank. In any event there could be no possible question in these circumstances of a right of the Sherapur villagers to defend their property for it was clearly a case in which they had plenty of time to have recourse to the public authority, the police station was only three miles away. The people who had taken the fish were very well-known to the Sherapur villagers and the case was wholly different from one where a person finds an unknown thief stealing his property in the middle of the night. It has only been possible to criticize the case for the prosecution in respect of two points. It is suggested that there was a delay in making a report. That delay might possibly be accounted for in many ways. No attempt was made on behalf of the defence to elicit the reasons for the delay by cross-examination-no questions were asked on the point.

4. Next it is suggested that this was not a case under Section 302. We think it is clearly established by the evidence that when the party set out from Sherapur each one of them set out with the intention of depriving by violence the Gaur villagers of the fish that they had caught. They must obviously have expected resistance, and that must have meant a lathi fight. When men use their lathis with the result that a man's skull is fractured, it must be taken in the absence of special circumstances, that they know that they were doing an act so eminently dangerous that it must in all probability cause such bodily injury as is likely to cause death. It is clear to us then that the offence of murder was committed, and under Section 149 all of them were equally guilty. It is manifest that the exact amount of guilt attaching to the accused in different cases and in different circumstances may vary, but we have no discretion to inflict less than the sentence of transportation for life if we are satisfied that it was a case in law of murder. This is one of the cases which we can only leave to the Local Government to consider.

5. Lastly, we have noted above that there was only one point in which we considered that exception might be taken to the judgment of the learned Sessions Judge and that is a point which it was not likely would be taken by the counsel for the defence, for it was not in the interests of his clients to take it. The learned Judge has said:

It is not, I believe, the common practice to sentence to death those who are implicated in a riot in which death is caused and in which the definite assailants are not ascertained.

6. We do not think that the learned Judge is right in stating the proposition so broadly and possibly he did not mean to. It is clear that there may be cases in which the guilt of any particular assailant of actually striking the fatal blow cannot be established but in which all the persons concerned would be indubitably guilty of murder and equally deserve a capital sentence. Such a case may clearly be where six men go out with the deliberate intention of killing a person and in pursuance of the common object one or other kills him. It may not be possible to establish which struck the fatal blow, but it is manifest that all would be equally guilty and all should receive a capital sentence. That again is a proposition stated broadly and in particular cases might require qualification; but it is sufficient to say that there should not be, if in fact it does exist a practice, to assume that where the particular person cannot be found to be guilty of the fatal blow the capital sentence should not be inflicted. The appeals are dismissed.