

Emperor Vs. Kallu

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Court : Allahabad

Decided On : Jul-02-1921

Reported in : 64Ind.Cas.133

Judge : Tudball, J.

Appellant : Emperor

Respondent : Kallu

Judgement :

Tudball, J.

1. In this case the appellant has been convicted of an offence Under Section 325 of the Indian Penal Code and has been sentenced to 1 1/2 years' rigorous imprisonment. He has appealed. I have examined the evidence. The facts which are established by it are as follows :--The deceased Sukha was a relation of the appellant. The accused was assisting one Bhika Kachchi to protect his crops, which had been cut on several occasions by thieves. On the night in question, Bhika and Kallu went to the field and saw in the darkness a man cutting the crop. The thief on seeing them arose and the accused, who was armed with a lathi at once struck him a blow on the head felling him to the ground. The two men raised an alarm. On looking closely at the thief they found it was Sukha, their own relative. The man, who had received a nasty blow on the head, was insensible. Other persons hearing the alarm shouted out and wanted to know what was wrong

and the two men, in order to hide the result of the blow, said that there were only some mares damaging the crop. Sukha's son, however, was sent for quietly and he was removed to his home where he died that night. The body was burnt the next day, but the injury to the head was noticed by several witnesses.

2. Sukha is said to have been a man in bad health, but the confession of the appellant himself shows clearly that he died as the result of the blow.

3. The Court below in these circumstances has convicted Kallu of an offence Under Section 325 and sentenced him as mentioned above. It seems to me that the case is one which comes under Exception 2 to Section 300 of the Indian Penal Code. The appellant caused the death of Sukha. He caused that death in the exercise, in good faith, of the right of private defense of property but he used a lathi, a weapon which has been repeatedly held in this Court to be a lethal weapon, and he struck the unfortunate man on a vital part of the body. He says that he struck through fear lest the thief should strike him, but he does not say that the thief aimed a blow at him and it would be by no means necessary to strike the man on the head. He, therefore, in my opinion, exceeded the power given to him by law, and he caused the death of the person against whom he exercised his right of defence but without premeditation and without any intention of doing more harm than was necessary for the purpose of self-defence. The conviction, therefore, in my opinion, in these circumstances ought to have been Under Section 304 of the Code, which was the offence charged against the appellant. I, therefore, alter the conviction from one Under Section 325 to one Under Section 304, The occurrence was an unfortunate . one and in the circumstances I think a lesser sentence than that imposed by the lower Court will suffice. I, therefore, reduce the sentence to one of one year's rigorous imprisonment.