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Court : Allahabad

Decided On : Jul-14-1920

Reported in : AIR1920All276; 58Ind.Cas.942

Judge : Sulaiman and ;Ryves, JJ.

Appellant : Emperor

Respondent : Jhamman and ors.

Judgement :

1. In this case notice was issued to the accused persons to show cause why their conviction under Section 325 of the Indian Penal Code should not be altered to one under Section 304 of the same Code and the sentences enhanced. Notices have been duly served but no one appears on their behalf. The case for the prosecution was that one Ekram had purchased a field in village Dandpur adjoining the plots owned by the accused, that on the 21st of October 1919 the accused armed with lathis went to Ekram's plot to upset the crops, that Ekram remonstrated, on which there was a fight in which Ekram and his nephew Ram Chandra were badly beaten, Ekram dying on the spot, The learned Sessions Judge was of opinion that the evidence did not show who amongst the accused had such a blunt weapon of border dimensions. It is also not clear at all as to who gave this deadly blow and, under the circumstances, the conviction can only be under Section 325, Indian Penal Code.' He placed reliance on Emperor v. Bhola Singh 29 A 282 : A.W.N. (1907) 51 : 4 A.L.J. 207 : 5 Cr. L.J. 130.

2. The medial evidence makes it quite clear that the deceased Ekram received no less than 6 injuries, 5 of which were on the head and one of which smashed his skull to pieces and there can be no doubt that the deceased seems to have been beaten even after he had fallen on the ground. The learned Sessions Judge has, however, found 'there appears to be greater reason to believe that Mukanda and Ekram's party went to take forcible possession of one-half of the field than that the accused went to upset the crops.' He goes on, however, to remark that it is quite clear to him that both sides went prepared to fight, for men on both sides received injuries. They were armed with lathis and they went to fight in vindication of their rights or supposed rights, In our opinion, on the facts found by the learned Sessions Judge, there can be no doubt that the accused persons were at least guilty of the offense under Section 304, Indian Penal Code. The case referred to by the learned Sessions Judge has not been followed in a number of subsequent cases. We may briefly refer to the following: Kanhai v. Emperor 21 Ind. Cas. 657 : 11 A.L.J. 752 : 35 A. 329 : 14 Cr. L.J. 609; Hanuman v. Emperor 21 Ind. Cas. 1005 : 11 A.L.J. 926 : 35 A. 560 : 14 Cr. L.J. 685; Emperor v. Ram Newar 21 Ind. Cas. 663 : 35 A. 506 : 11 A.L.J. 804 : 14 Cr. L.J. 615 and Emperor v. Gulab : 47 Ind. Cas. 805 : 40 A. 686 : 16 A.L.J. 731 : 19 Cr. L.J. 953.

3. It appears, however, that both the accused persons are very young. Jhamman is 20 years and Dhal Singh is 17 years. In view of their youth and the fact that it was Mukanda and Ekram's party that went to take forcible possession of one-half of the field, we are of opinion that the sentence of 5 years' rigorous imprisonment on each would, under the circumstances, meet the ends of justice. We accordingly alter the conviction from one under Section 325, Indian Penal Code, to one under Section 304, Indian Penal Code and change the sentence to 5 years rigorous imprisonment in each case. The sentence under the rioting section will stand and will run concurrently.