

Gosain Vs. Emperor

Gosain Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/474228

Court : Allahabad

Decided On : May-22-1920

Reported in : 57Ind.Cas.175

Judge : Tudball and ;Sulaiman, JJ.

Appellant : Gosain

Respondent : Emperor

Judgement :

1. The facts of this case are not disputed. The appellant Goshain has been convicted of the offence of murder Under Section 302 of the Indian Penal Code and has been sentenced to death. The record is also before us for confirmation of the capital sentence. The appellant has told from the very beginning one story consistently and the statement that he has made has been accepted by the Sessions Judge as correct. The deceased was one Lachhmi for a certain length of time the accused Goshain Lohar had strongly suspected an intrigue between his wife and Lachhmi. He consulted with one Parma, who has also been convicted in this case but who has not appealed, and Parma agreed to watch and let him know whenever he saw his wife and the deceased together. On the day in question Parma saw Lachhmi, the deceased, coming up from the river Ram Ganga and saw him also in company with Musammat Paduli, the appellant's wife. He whistled to give the accused information of what was happening. The accused left his house and from a distance Parma signalled to him with his hand to show where

the guilty couple were. Thereupon the accused returned to his house, took a weapon which has been described by the Judge as a lathi but which appears to have been a solid Sal pole, and went towards the spot. He came upon his wife and the deceased in the act of intercourse and as the deceased arose he struck him one blow on the head, killing him on the spot. He then with the assistance of Parma threw the body into the river. These are the plain facts. The first question for our decision is whether the offence committed is that of murder under Section 302 of the Indian Penal Code or that of culpable homicide not amounting to murder under Section 304 of the Code. It is quite evident that the appellant was on the look-out to catch his wife and the deceased together. 'When he got information that they were together he returned to his house and armed himself with a weapon so deadly that one blow alone was sufficient to kill the man. He went straight to the spot and killed him. The fact that he returned to his house to fetch the weapon shows that Goshain had an opportunity of thinking and that he did use his mind and did form an intent to use the weapon which he took upon the person of the deceased . It appears that it was a heavy Sal pole and deadly, in its effects, as is proved by the event. The blow was struck upon the head, the most vulnerable spot in the body for a weapon of that description. There is no doubt that he had grave provocation. The element of sudden- ness is removed by the fact that he was seeking for an opportunity, that he had time to think, that instead of going straight to the spot he returned to his house and armed himself with the weapon. The element of suddenness is, therefore, removed and that is an essential ingredient to enable us to hold that the offence is one under Section 304 of the Code. We think the conviction has been rightly held under Section 302. The Sessions Judge says in his judgment that he had no justification for passing a sentence less than the death penalty. With this we cannot possibly agree. We think the appellant had very grave provocation indeed--a provocation which all the world over frequently results in death. We think the circumstances of the case are such that the Judge ought to have passed the lesser sentence allowable by law. We, moreover, are further of opinion that the sentence might well be reduced still further by the Local Government in the exercise of its prerogative of mercy. We, therefore, maintain the conviction under Section 302 of the Indian Penal Code. We reduce the sentence to one of transportation for life. We further direct that the record be

forwarded to the Local Government with a recommendation that a still further reduction be made in the sentence passed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com