

Fauja Alias Faiz Mohammad Vs. Emperor

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Court : Allahabad

Decided On : Mar-07-1919

Reported in : 50Ind.Cas.833

Judge : Piggott and ;Walsh, JJ.

Appellant : Fauja Alias Faiz Mohammad

Respondent : Emperor

Judgement :

1. This is an appeal by one Faiz Mohammad, alias Fauja, who has been convicted by the Court of Session sitting at Hamirpur on a charge of murder and sentenced to death. The record is also before us for confirmation of the sentence of death. We are driven to the conclusion that the charge as framed contravenes the provisions of sections 233 and 234 of the Criminal Procedure Code and is not justified by the provisions of Section 235 of the same Code.

2. Broadly speaking, the case for the prosecution was that five persons were murdered, three in the course of the forenoon of the 2nd of June 1918 in the neighbourhood of the village called Bara and two others at a village called Srinagar on the afternoon of the same day.

3. The triple murder and the double murder were not so connected together as to represent a series of acts forming the same transaction, so that the provisions of Section 235 of the Criminal Procedure Code do not apply.

4. The Magistrate and also the trial Court presumably took it for granted that they were trying the appellant for two murders and that this procedure was covered by Section 234. We are unable to accept this view, as it seems dear to us that the charge alleged the commission of five murders; that is to say, the killing of five human beings, in respect of each of whom a single charge of murder could have been framed.

5. On the principles laid by their Lordships of the Privy Council in *Subrahmaniam Ayyar v. King-Emperor* 25 M. 61 : 11 M.L.J. 233 : 3 Bom. L.R. 540 : 28 I.A. 257 : 5 C.W.N. 883 : 2 Weir 271 (P.C.) : 8 Sar. P.C.J. 160 it seems impossible to treat this as an irregularity, or to deal with the matter by taking into consideration the evidence offered, either in respect of the triple murder, or in respect of the double murder. We must set aside the conviction and sentence in this case and, in so doing, we must also set aside the conviction of one Binda, who was charged with abetment of the double murder under sections 302 and 114 of the Indian Penal Code and tried jointly with the appellant Fauja.

6. We order both Fauja and Binda to be re tried on a charge or charges properly framed.

7. From the examination we have made of this record we can scarcely refrain from suggesting that the prosecution might be well advised to try the two accused, in the first instance for the double murder alleged to have been committed in village Srinagar and to await, the result.