

Chidda Singh Vs. Emperor

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Court : Allahabad

Decided On : Jun-06-1924

Reported in : 82Ind.Cas.364

Judge : Boys, J.

Appellant : Chidda Singh

Respondent : Emperor

Judgement :

Boys, J.

1. In this case two men Randhira and Sital have been already in a prior case convicted and sentenced to three years' rigorous imprisonment each under Section 325 of the Indian Penal Code. The present appellant Chidda Singh was absconding. Six witnesses now in the Sessions Court state that the present appellant was one of the three men, the other two being Randhira and Sital who struck Ram Sarup under a mango tree to which he had retreated at the instance of his son from the threshing floor where the light began. Five of these six witnesses never named Chidda Singh as striking Ram Sarup under the mango tree in their statements which were recorded under Section 164 of the Criminal Procedure Code nor in their statements at the first trial of the other two accused. Begraj mentioned him at the first trial but did not mention him in his statement under Section 164, Exhibit P, Criminal Procedure Code. The learned Sessions Judge

has not relied on these five witnesses but has considered himself justified in relying on Begraj supported by the fact, that Chidda Singh absconded and as he says that Chidda Singh was named in the first report. The fact of his absconding can be of very little value. As to the first report it is a purely general statement that such and such people beat such and such people and it is made by one Sagar Mal who says nothing himself and was merely giving a general description of what he had heard from others and even that general description does not attribute to Chidda Singh the particular beating of Ram Sarup, still less the particular beating which took place under the mango tree at which place it is certain the grievous hurt must have been caused which is the subject of the charge. Under these circumstances after hearing both sides at length I am quite certain that I find myself unable to uphold the conviction of Chidda Singh on the belief that he himself struck Ram Sarup the blow (there was only one blow on the head) which eventually proved fatal under the mango tree. It then becomes necessary to consider the charge. Chidda Singh the appellant was specifically charged that he 'caused such bodily injury to Ram Sarup which resulted in the man's death and thereby committed an offence punishable under Section 325, Indian Penal Code.' Finding that I cannot uphold the conviction on the ground that Chidda Singh himself caused the injury the question is whether at this stage I can alter the charge.

2. It is urged on behalf of the Crown that there was common intention on the part of the several accused to beat the several members of the other party and that, therefore, a conviction could properly be arrived at with the aid of Section 34 of the Indian Penal Code. This course appears to involve the following difficulties:

3. Firstly, I cannot alter a charge except under the authority given by some section of the Criminal Procedure Code. The sections which would have to be considered are 236, 237 and 238; It is not urged, and cannot be urged, that Sections 236 and 238 are applicable to a case of this description, and as regards Section 237 the provision in that is prefaced by the words 'in the case mentioned in Section 236'. It is clear to me, therefore, that there is no section which will justify me in altering the charge and proceeding now to a conviction on that charge. It would really mean convicting the accused by bringing in two new facts which he was never asked in

any way at all to meet in the lower Court. Those two new facts being

(1) not that he himself but somebody else of his companions struck the accused;

(2) that blow was struck in pursuance of a common intention.

4. I might be inclined to hold that the evidence on the record certainly indicates that those two points might be held to be established; but that would not justify me in altering the charge and proceeding here to a conviction without giving the accused a definite opportunity of meeting them. The last question then is; ought I to set aside the conviction and send the case back for a re-trial on an amended charge of Section 325, Indian Penal Code, in reference to the blow inflicted by Sital and Randhira read with Section 34. It appears to me that I ought not to do this. In the first place the accused has stood his trial once. That is, however, not a conclusive reason for not sending the case back. The conclusive reason is that I am acquitting him here on the charge of Section 325, Indian Penal Code, based on the allegation that he inflicted the blow himself and am acquitting him on that charge not on any technical ground but because I hold that the witnesses in now attributing to him a personal part have clearly interpolated his name. To send the case back would mean inviting the Court below to believe on the amended charge the very witnesses whom I have held here to have in effect committed deliberate perjury. This would be very undesirable.

5. For the above reasons I allow the appeal of Chidda Singh, set aside his conviction and sentence, and direct that he be forthwith released.

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