

Emperor Vs. Umrao

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SooperKanoon Citation : sooperkanoon.com/480432

Court : Allahabad

Decided On : Feb-09-1923

Reported in : 74Ind.Cas.257

Judge : Grimwood Mears, C.J. and; Banerji, J.

Appellant : Emperor

Respondent : Umrao

Judgement :

1. Upon reading the Sessions Statement in this case a Judge of this High Court directed notice to be served upon the accused to show cause why this Court should not either (a) order his re-trial on a charge framed under Section 302 of the Indian Penal Code, or (b) whilst maintaining the conviction enhance the sentence. The accused was charged with having caused the death of one Murari. There is really no difficulty about the facts, and we accept the facts which the learned Sessions Judge considered to be proved. On the occasion in question the accused struck one blow with a lathi which fell upon the head of Murari. This blow fractured Murari's skull and he died shortly after. There were no circumstances which brought this case within the exception of grave and sudden provocation. There was, however, evidence of the quarrel between the two men and there seems very little doubt that there was an exchange of abuse. In the result the learned Sessions Judge convicted the accused under Section 304 and sentenced him to three years' rigorous imprisonment. As regards the length of the sentence

we do not, on a review of the whole of the circumstances, disagree with the learned Sessions Judge but having regard to Clause (4) of Section 300 of the Indian Penal Code and Illustration (c), the question which we have to decide is, whether on the facts as proved the offence was not murder. We are of opinion that the accused when committing the act did know that it was so imminently dangerous that it must in all probability cause death and that he did commit that act without any excuse. Illustration (c) is clear in terms that a man is guilty of murder although not intending to cause murder if intentionally he gives to another a 'club' wound sufficient to cause death in the ordinary course of nature. That is in fact what happened in this case, but it is to be observed that the accused struck one blow only, and if intention was an element we should come to the conclusion that he did not by that single blow intend to kill the deceased. That, therefore, is a circumstance of extenuation. The fact that there was a quarrel is another circumstance. Holding him guilty under Section 302 we sitting in revision have power to alter the conviction from one under Section 304 to one under Section 302. Under that section this Court has power to pass one of two sentences, and we chose, the lesser sentence for the reasons which we have given, and sentence the accused to transportation for life. At the same time, we desire to draw the attention, of the Local Government to this case; and in accordance with the practice, which this Court was invited to pursue recently, we intimate to the Local Government that we are of opinion that this is a case in which clemency may be, shown to the accused. If the Local Government adopt our view we think the appropriate sentence would be the same sentence as, that already passed, on him by the Sessions Judge, namely, three years' rigorous imprisonment. We, therefore, alter the conviction under Section 304 to, one under Section 302 and sentence the accused to transportation for life.

2. We direct that the record be submitted to the Local Government.