

Chandan and ors. Vs. Emperor

Chandan and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/481399

Court : Allahabad

Decided On : Feb-10-1926

Reported in : 94Ind.Cas.363

Judge : Lindsay, J.

Appellant : Chandan and ors.

Respondent : Emperor

Judgement :

Lindsay, J.

1. The three appellants in this case, Chandan, Udai Singh and Bansi, all brothers, have been convicted in the Court of the Sessions Judge of Muttra on charges under Section 325, Indian Penal Code and have been sentenced each to seven years' rigorous imprisonment and fine.

2. The accused were committed for trial on a charge under Section 304 and, in my opinion, they ought to have been convicted on this charge and not under Section 325.

3. The case against the accused was that on the 18th of September 1925 they joined in attacking one Kalla jat with lathis with the result that Kalla received injuries which caused his death on the following day. The medical evidence shows

that death was caused by fracture of the skull.

4. On the morning of the 18th of September these three accused went to the door of Kalla's house where some cattle were tied up. It is said that they loosed the cattle and began to drive them towards the pound at Sadabad. Two brothers of Kalla named Moti and Bhopal heard about this and came and remonstrated with the accused. The accused retorted by saying that they were driving the cattle to the pound because Moti and his brothers had done the same thing to their, (accused's) cattle some eight or ten days before. The accused took the cattle to the pound at Sadabad. Moti and Bhopal followed them and there a report was made to the Police about the wrongful impounding of the cattle. Moti afterwards went to the pound and got the cattle released and handed them over to Bhopal to take back to the village. He himself went off meanwhile to file a complaint before the Honorary Magistrate of Sadabad.

5. It appears that some of the cattle belonging to Kalla and his brothers had remained behind and could not be taken to the pound along with the other animals. A brother of the accused, a man named Jaswant, remained behind to look after these cattle, and it is said that while doing so Jaswant was assaulted. Jaswant then went to Sadabad where he met the accused Chandan and Udai Singh to whom he related what had happened to himself. Udai Singh and Chandan then came back to the village where they got hold of their brother Bansi, the third accused. They proceeded to attack Kalla and some of his relations. The evidence shows that the conflict between these two parties began with the throwing of brickbats. Kalla and his party were posted on a chabutra whilst the accused were in their fields close by. Eventually Kalla and the others retreated from the chabutra whereupon they were pursued by the three accused appellants. Bhopal a brother of Kalla who was present at the time was beaten but managed to make his escape. The three accused fell on Kalla with their lathis and knocked him to the ground. A report was made to the Police and Kalla was taken to the hospital where before his death he made a dying declaration which was recorded by a Magistrate and which has been used in evidence against the prisoners. In that statement he described how he had been assaulted by the three accused appellants. Bhopal, one of the men who was attacked by the accused and who

escaped gave evidence in support of the prosecution case, and we have also the statements of three witnesses Girdhari, Ganpat and Bidha who are apparently independent witnesses and who all describe the occurrence in the same manner as is done by the witness Bhopal. They all say that the three accused felled Kalla to the ground with their lathis. Another witness, Shib Nath, corroborates the evidence of these men in part. He saw something of the preliminary fight during which the parties were throwing missiles at each other but he went away before the lathi attack was made upon Kalla.

6. The defence set up a plea of enmity of which the Judge says there is no proof forthcoming. In the Magistrate's Court they stated that they would account for the manner of Kalla's death when they would be put on their trial before the Sessions Judge. When they came into the Sessions Court, however, their story was that they knew nothing about the death of Kalla. There was some evidence put forward to show that there was enmity between the accused and Moti, the brother of the deceased Kalla, over the purchase of a bullock. The story was that Moti had bought a bullock from the accused for Rs. 100 and had not paid the money. The Judge disbelieved this statement, and there was no reliable evidence to show that any such incident had ever occurred.

7. The Assessors were all satisfied that the accused were the men who attacked Kalla with lathis. The Judge was of opinion that because it could not be ascertained from the evidence which of the accused struck the blow which resulted in the fatal injury, namely, fracture of the skull, none of them could be convicted under Section 304. He refers to a number of cases of this Court in support of this opinion. The law as stated by the learned Sessions Judge is wrong and has been correctly laid down in a recent case decided by their Lordships of the Privy Council [Barendra Kumar Ghose v. Emperor .] The prisoners ought to have been convicted under Section 304 and I alter the conviction accordingly. I have entertained some doubt as to whether the sentences passed by the Sessions Judge are adequate to the gravity of the crime. On consideration, however, I have decided not to issue notice to the accused-appellants to show cause why those sentences should not be enhanced. They have each received a substantial sentence and on the whole I think the ends of justice are satisfied thereby. I

dismiss the appeals.

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