

Chhattar Vs. Emperor

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Court : Allahabad

Decided On : Aug-06-1929

Reported in : AIR1929All897

Appellant : Chhattar

Respondent : Emperor

Judgement :

Young, J.

1. This is the appeal of one Chhattar, who was charged under Section 302, I.P.C. before the Additional Sessions Judge of Etah. The learned Judge, on the evidence before him, convicted the accused under Section 304, I.P.C., and ordered him to undergo four years' rigorous imprisonment.

2. The facts in this case are perfectly clear. It appears that it was the turn of the accused to use water of a certain well in the zamindari of Nawab Sir Mohd. Muzammillulah Khan of Aligarh. The said zamindar kept a register of his tenants and, in order to avoid trouble, arranged that on certain days certain tenants should have the right of drawing water to irrigate their fields from the well. A very sensible custom had grown up that several villagers should assist the tenant whose right it was for the day to draw water from the well, and in his turn the tenant would assist them on other days. Apparently on this day (I am taking these facts from facts found by the learned Additional Sessions Judge, and I agree thoroughly with his

findings) Chhattar and his brother Babu went early to the well for the purpose of drawing water to irrigate their field, it being, without any doubt whatever, their right to draw water on that day. They were there first. Thereafter Ghamandi deceased and his brother, who is also called Babu, came to the well, and shortly afterwards two other men came to the well. Ghamandi and his brother along with some relatives wanted to take the water from Chhattar and use it in their own field. Ghamandi and his brother were foremost in their endeavour to deprive Chhattar of his absolute right. Chhattar very naturally objected, with the result that Ghamandi took the initiative in attacking Chhattar with his stick or lathi. The Judge is not decisive on this point that Ghamandi was armed with a stick or lathi. In any case, there is no doubt that Chhattar, the accused, was the person who was attacked. He was also injured, which is clear from the medical evidence. In self-defence (and in this matter the Judge agrees that he acted in self-defence) Chhattar hit Ghamandi on the head with his lathi, and unfortunately killed him. He did not hit Ghamandi after he had fallen. Babu, the brother of Ghamandi, then attacked Chhattar, and in his turn received some blows from Chhattar. The Judge found, and I agree with him, that Chhattar received blows from the weapons of his opponents before, in his turn, he inflicted blows on them.

3. There can be no doubt on which side the fault lies in this case. Chhattar was exercising his lawful right, and he was interfered with by Ghamandi, who wished to deprive him of it. He was interfered with to the extent of being attacked, and he, very rightly and properly, resisted the attack of Ghamandi; and if in so doing he hit him on the head and unfortunately killed him, I cannot see how it can be said to be exceeding his right of self-defence. I held last week, and indeed it has been held many times by this Court, that where a man has been attacked by another man and uses a weapon such as a lathi, it is impossible to lay down with any sort of accuracy the extent to which the attacked person rightfully acts in his defence. In a marpit of this sort, brought by the illegal act of the dead person himself, the accused cannot be blamed if, through misfortune, he happens to hit the dead man rather harder than perhaps he intended to have done.

4. It is noticeable in this case that from the very first She accused has told the story which the Judge has now found to be correct. He also says in his confession

under Section 164 that he had no intention whatever to kill the deceased. I am quite prepared to accept this contention. It seems unlikely to me that he would have the intention in a marpit of this sort suddenly springing up, when he was attacked, deliberately to kill the deceased. I am satisfied in this case that the accused did not exceed the right of private defence, and therefore I must set aside the conviction and sentence and order his immediate release.

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