

Kunja Bhuiya Vs. Emperor

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Court : Kolkata

Decided On : Mar-13-1912

Reported in : (1912)ILR39Cal896

Judge : Holmwood and; Sharfuddin, JJ.

Appellant : Kunja Bhuiya

Respondent : Emperor

Judgement :

Holmwood and Sharfuddin, JJ.

1. This is an appeal from the judgment and sentence of the learned Sessions Judge of Midnapore, who, agreeing with both the Assessors, found the appellants, Kunja Bhuiya and Panc.hu Bhulya, guilty of the offence of rioting under Section 147, and sentenced them to two years' rigorous imprisonment each. There were charges under Sections 304 read with 149, and 325 read with 34, of the Penal Code in respect of the injuries caused to one Bariar who met his death in consequence of the assault. The learned Judge finding that the fracture of the skull which caused the death was an isolated act committed by one Srinibas, and finding also that the charge under Section 304 read with 149 was withdrawn, did not take the Assessors' opinion on it, but he says in his judgment, and we think erroneously, considering the findings which we shall shortly have to come to, that the same remarks really apply to the charge under Section 325 read with 84, as

none of the contusions found on Bariar were severe.

2. Now, what is really found in this case is that the accused party were justified in going to the land with the peon who had a warrant in execution of a Civil Court decree, and that they were interfered with, and one of their number, the drummer, was pushed or struck with a lathi by the deceased Bariar who had come out from his house with a party of his adherents and opposed the lawful delivery of possession. This is what gave the appellants' party the right of private defence, and the Judge seems to change his mind more than once as to whether they had this right of private defence or not, and he finally seems to come to the conclusion that the assembly became unlawful by reason of the accused retaliating when they were obstructed in the lawful exercise of their right, and he then seems to think that they made an independent attack upon the deceased's party, and that the deceased's party then also had a right of private defence. We confess we are unable to follow the reasoning of the learned Judge. Once an attack was made on persons in the lawful exercise of their right over the property in question, they were undoubtedly entitled to the right of private defence, and the only question which can arise after that is whether any members of the party individually exceeded that right. People who were in the exercise of lawful rights cannot be held to have been members of an unlawful assembly, nor can that assembly become unlawful, by reason of their repelling the attack made upon them by persons who had no right to obstruct them, nor by reason of their exceeding the lawful use of the right they had.

3. We have laid down before, and we desire to lay down again, that the fact of exceeding the right of private defence which a man has cannot make him a member of an unlawful assembly, and he can only be convicted and punished for the individual act which he himself has done in excess of the right of private defence; and it is because we think that these two appellants, Kunja and Panchu, did exceed that right, in that they continued to beat Bariar with lathis after he had been struck down with a fractured skull and was lying in the water in a practically moribund condition, that we have to consider the question of law which we just now pointed out had been wrongly decided by the learned Judge with reference to the charge under Section 320 read with Section 34. That charge includes the

charge under Section 323, and, notwithstanding the finding of acquittal under Section 325, we can, on the whole case being open to us on the charges originally framed, convict and punish any of these appellants on any fact which may be found against him under Section 323. What they have been acquitted of is causing fracture to the skull of Bariar, but they have not been acquitted of causing simple hurt in a cruel and unnecessary manner after the deceased had fallen and was incapable of rising. For this, we think, they deserve a severe punishment; and while we are obliged to set aside the conviction and sentence under Section 147 as being illegal, we think that it is within our power, and also distinctly our duty, to convict the appellants under Section 323.

4. We accordingly direct that the appellants Kunja Bhuiya and Panchu Bhuiya be rigorously imprisoned for one year under 323 of the Indian Penal Code. With this modification the appeals are dismissed.