

In Re: Lakhansawra and ors.

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Court : Kolkata

Decided On : Jul-05-1932

Reported in : AIR1932Cal815,139Ind.Cas.81

Judge : Rankin, C.J., ;C.C. Ghose and ;Costello, JJ.

Appellant : In Re: Lakhansawra and ors.

Judgement :

Rankin, C.J.

1. In this case four persons were tried before the learned Sessions Judge of the Assam Valley District on a charge that on 17th December 1931, at about 10 o'clock at night they participated in the murder of one Jampara. The people implicated in this case are all coolies in an Assam tea garden--persona of very primitive belief and of very rudimentary intelligence. The evidence of conduct has to be judged with a reasonable appreciation of their position and habits in life; and it is clear enough from the statement consistently adhered to by the accused men that in the courtyard of one of these coolie huts there was a fire and that Jampara the deceased man on the night in question was sitting by this fire. One of the rooms of this hut was occupied by a nephew of the deceased named Suno and the other room by Garo one of the accused persons. The deceased had a coat on his person at the time. It turns out that in the pocket of the coat there was a, knife--not that there is the smallest evidence that the man ever used the knife or intended to use the knife in any improper way, not that there is the smallest reason

why a coolie in this part should not carry a knife. The evidence of the prosecution witnesses and the evidence that comes from the statements of the accused is this : As he sat there on that evening and was doing no harm to anybody the four accused persons came up to him and began to dispute with him about the following grievance:

2. The accused Lakhan for reasons which he and the other accused attributed to sorcery by Jampara had recently become dumb and had been unable to resume his faculty of speech. These accused persons had come to the conclusion that some magic employed by Jampara had occasioned this infliction. On the night in question they came out and began from the beginning to deal with him upon that footing. They told him that he must put Lakhan's dumbness right and they threatened to kill him if he did not do so. Jampara explained to them in the plainest language that he had no knowledge of magic to put any body right or to put any body wrong. According to every body's version of the case they-- all four of them-- there and then set up this man Jampara to deal with him according to their notion of the deserts of a man who had made Lakhan dumb and who refused to put him right. The question is what happened when they set upon him. It is quite clear that he was struck on the back of his neck by Lakhan with a stick brought out of some fence and probably the wound on the back of the deceased's neck is the result of this blow. It is quite clear that all the four accused took part in the assault. It is also quite clear that Jampara never used his knife or attempted to use his knife even in self-defence, probably he did not get any chance. It seems that this assault on Jampara reduced him to a state of helplessness. At what exact moment in the proceedings Jilka took the knife out of Jampara's pocket and stabbed him fatally is the only important matter upon which there is any room for a dispute. The question is whether the other three were merely present and minded to assault Jampara but that Jilka suddenly found this knife and proceeded unexpectedly to stab the man or whether all these four persons were engaged from the beginning in an endeavour either by blows or otherwise to kill Jampara as being a person who was engaged in sorcery and who refused to put Lakhan, right again. I think it is reasonably plain upon this evidence that all these four persons took part in this affray from the beginning with the intention to kill Jampara as being a sorcerer. The various parts played by each of them as described in the statements which

they made in the committing Court are very noticeable. Jilka does not give any exact idea when he stabbed the deceased on the back. From the way in which he made his statement it seems as if he had done so after the man had expired owing to the blows given by the other accused. That may very safely be disregarded. Bima says that after striking him:

We all four dragged him away. Jilka cut him on the back with this katari. After that we buried him in a well.

3. So the dragging, according to this accused, had begun before the stabbing. Garo says:

Lakhan then struck him two blows with this lathi and I struck him one blow with this bamboo stick. Bima gave him two flaps, he then died. We all dragged the body. Jilka got this katari and gave him a cut on the back with the same.

4. Here the dragging began before the stabbing and the stabbing was after the man was dead. Now these accounts give us a very good means for checking the evidence as given by the prosecution witnesses. The main witness Suno says that:

Lakhan brought out a stick from some fencing and struck Jampara on the back of the neck. Jampara fell down. Then Garo struck him also on the back of the neck, Then Jilka and Bima struck him with their fists on his chest.

He says:

I told them not to strike him but the accused said they would kill him outright. Dengu said to the accused that if they struck him in this way they would be punished.' The accused said that Jampara had caused Lakhan's tongue to leave to his mouth for the last three months and that they would kill him. It was Garo who said Mas, After the accused had struck Jampara in the court-yard he was still alive. They dragged him to a well. Jilka brought out a knife from Jampara's pocket and stabbed him in ' the back. At was dark but I could see. Then they threw him into the well and threw earth on him with kodalis all four of them.

5. I have no doubt from the circumstances of this case that the attack and the dragging to the well were done in concert and that they all four took part in the endeavour to murder this man and to put his body in the well. It is perfectly true that they were not particular whether they buried him before he was mutually dead or not. Finding a knife in his pocket, before actually sending him to the well Jilka stabbed him thereby completing their intention to murder him. He then threw him into the well, and all the other accused took part in that proceeding and in disposing of the man's belongings.

6. The verdict of the jury refusing to find those accused guilty of murder but compromising upon a charge under S.304, I. P. C, is illogical and should not be accepted. It is equally clear that it would be against the evidence and contrary to the manifest probabilities of the case if we hold that these three people are guilty only of offence under Section 323, I. P. C. In my judgment the reference should be accepted and all the accused persons before us should be found guilty of murder under Section 302, I.P.C. As Jilka who used the knife has for reasons which appear to us not unfounded been sentenced by the learned Sessions Judge to transportation for life we pass no higher sentence upon the accused before us and we sentence them to transportation for life.

C.C. Ghose, J.

7. I agree.

Costello, J.

8. I agree.

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