

In Re: Faezulla

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SooperKanoon Citation : sooperkanoon.com/885329

Court : Kolkata

Decided On : Aug-05-1920

Reported in : 61Ind.Cas.522

Judge : Richardson and; Ghose, JJ.

Appellant : In Re: Faezulla

Judgement :

1. The appellant before us was convicted by the Sessions Judge of Sylhet, on two charges framed under Section 326, read with Section 34, of the Indian Penal Code. He was tried before the Sessions Judge sitting with Assessors along with another accused who has been acquitted.
2. It is quite clear that serious injuries amounting beyond doubt to grievous hurt were inflicted on two persons named Siddek and Rueshan by means of sharp acctting instruments such as does.
3. The evidence shows that there was a quarrel between Siddek and another man named Wajid, with referenda to the use of a small irrigation channel. Wajid was in possession, so to speak, of the channel when Siddek interfered with his user of it by diverting the water to his own land. Upon that the quarrel arose and there followed a somewhat confused affray or melee in which others joined.
4. The learned Sessions Judge, in the accurse of his very fair judgment, has certainly not minimized the discrepancies to be found in the evidence of the

witnesses for the prosecution. In such a case it would not be surprising, even if the witnesses were educated persons, that some discrepancies in their evidence should occur. We have given to these discrepancies all the weight that, in our opinion, they deserve. In the result, we agree with the Sessions Judge that Fatz took a prominent part in this affray, being armed with a dao and is responsible for one or more of the injuries inflicted on Siddick and Rushan.

5. Now, it is not suggested that the nature of the provocation given by Siddek or anything which subsequently occurred, justified the appellant or any one else on his side in using so dangerous a weapon as a dao. But it seems that not only the appellant but some one else on his side was armed with a dao, and that the resulting injuries to Siddek and Rushan were not all equally serious. It is contended as to the charge and the reference therein to Section 34 of the Penal Code that the appellant was not responsible for the injuries caused by any other person than himself and that the evidence does not show that he individually caused grievous hurt. In support of this contention the appellant's learned Vakil relied on the case of *Emperor v. Nirmul Kanta Roy* 24 Ind. Cas. 340 : 41 C. 1072 : 18 C.W.N. 723 : 15 Cr. L.J. 460, which was cited also in the Court below and seems to have had some influence on the opinion expressed by the Assessors that Faez was not guilty. The judgment in that case is the judgment of Stephen, J., and is entitled to all the respect due to that learned Judge. It is unnecessary for us, however, on the present occasion to consider how Section 31 should be applied to the particular state of facts with which Stephen, J., had to deal. Whatever may be the precise meaning of the language employed by the Legislature, it seems clear that the section does not create a distinct offence. See *Emperor v. Nogendra Nath Sen Gupta* 30 Ind. Cas. 128 : 21 C.L.J. 396 at p. 399 : 19 C.W.N. 923 : 16 Cr. L.J. 576. It lays down a principle of liability and if the narrower construction favoured by the majority be accepted then a wider contribution must be placed on Section 114 of the Indian Penal Code than that adopted in such cases as *Abhi Miser v. Lachmi Narain* 27 C 566 : 4 C.W.N. 546. See for a further statement of Stephen, J.'s views, 18 C.W.N. 221 (221), The charge here would have been a good charge without any mention of Section 34. In cases of the present type when two or more persons join actively in an assault on a third person, there is ample authority for the view that they are directly responsible for the injuries to the extent to

which they had a common intention to cause those injuries and what their common intention was must be gathered from the circumstances. We may refer, for instance, to the cases of *Gouridas Namasudra v. Emperor* 2 Ind. Cas. 841 : 36 C. 659 : 13 C.W.N. 68 : 10 Cr. L.J. 186, referred to and distinguished by Stephen, J., and *Chandan Singh v. Emperor* 43 Ind. Cas. 438 : 40 A. 103 : 16 A.L.J. 11 : 19 Cr. L.J. 150. The case before us presents little difficulty. The appellant and those who acted with him must be debited at least with a common intention to cause grievous hurt, such hurt being the natural and probable, if not the inevitable, consequence of their joint attack on Siddek and Rushan. We have no doubt, therefore, that the appellant has been rightly convicted under Section 326, Indian Penal Code.

6. The only excuse that can be made for the appellant lies in the provocation which he undoubtedly received from Siddek. Siddek's conduct in interfering with the use of the irrigation channel by Wajid, the appellant's brother, was unjustifiable. In view, therefore, of the origin of the quarrel we reduce the sentences of four years' rigorous imprisonment passed upon the appellant by the Sessions Judge to a sentence of three years' rigorous imprisonment on each of the two charges the sentences to run concurrently. With this modification of the sentence, the appeal is dismissed. The appellant must surrender to his bail and serve out the remaining period of his sentence.