(1918) 07 AHC CK 0019

Allahabad High Court

Case No: None

Emperor		APPELLANT
	Vs	
Gulab and Others		RESPONDENT

Date of Decision: July 4, 1918

Citation: AIR 1918 All 420 : (1918) ILR (All) 686 : 47 Ind. Cas. 805

Hon'ble Judges: Tudball, J; Abdul Raoof, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Tudball and Abdul Raoof, JJ.

Notice was issued by a learned Judge of this Court to the three persons Gulab, Majid and Ghafur to show cause why they should not be convicted of van offence punishable u/s 304 of the Indian Penal Code, why the sentences passed on them should not be enhanced, or why they should not be ordered to be re-tried on a charge u/s 302 of the Indian Penal Code. The facts of the case, as found by the court below and which appear to us to have been correctly found, are as follows:--There was a sugarcane crop standing in three fields. It had been sown by the deceased Hardial and his partners Jahangir, Bhagwan Sahai and others. These fields had been given to Hardial by the accused to enable him to recoup himself for certain moneys which he had advanced to them and which were due to him from them. The mortgage of an occupancy holding is of course contrary to law. No bond was executed in this case, but the fields were actually made over to Hardial and he cultivated them. One of his duties was to pay the-rent. The evidence shows that he had failed to pay two installments. On the date in question he and his friends and his nephew Ganga Prasad were cutting the sugarcane crop when the three accused appeared upon the scene and Gulab objected to his cutting the crop as he had not paid the rent, Hardial replied that he had intentionally not paid the rent because the accused owed him other money and that he had set it off against the debt. Abuse followed between the parties and thereupon, according to the evidence for the prosecution, the three men attacked Hardial with their lathis. Ganga Prasad was also

armed with a lathi and a regular fight took place between two men on one side and three on the other. The result was considerable injuries on both sides. Hardial received three blows on the head, one on the cheek, one across the ear and some on his body. The injuries on the head were all on the right side. According to the evidence for the prosecution, some of the injuries were inflicted after be had been knocked down and the fact that the injuries on the face, ear and head are all on the right side, is some indication of the fact that this really occurred. Ganga Prasad also received con-considerable injuries. Upon other persons arriving at the scene, the accused tied. The court below has convicted the accused under. Section 325 of the Indian Penal Code of having voluntarily caused grievous hurt, relying upon the ruling in the case of Emperor v. Chandan Singh I. L. R(1917) . All. 103. It is obvious that the offence of culpable homicide either amounting to murder or not amounting to murder was committed. A man''s life has been taken. It is obviously, impossible in cases of this description to be able to prove that the fracture of the skull which resulted in death was caused by a blow from the lathi of any special one of the assailants. In the present instance Hardial had three fractures of the skull and had received three lathi blows upon the head. The three accused were, alt armed with the same class of weapon. They all attacked Hardial. A lathi is a lethal weapon, as has been repeatedly held in this Court for very many years. The person who uses a lathi must know on an occasion like this, that he is very likely to cause death. The three accused were moved by a common intention. That intention may not have been to cause death, but in carrying out their intention they all used deadly weapons and they must be deemed to have known that they were likely to cause death. We cannot agree that the accused can only be convicted of voluntarily causing grievous hurt: It is impossible to say whose lathi fractured the skull. The other blows inflicted on the body of Hardial caused only simple hurt. It appears to us that the present case falls within exception 4 of Section 300 of the Indian Penal Code, wherein it is stated "that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender''s having taken undue advantage or acted in a cruel or unusual manner." If five or more persons had banded together in this matter on behalf of the accused, no one would have hesitated to have held all five guilty of the offence of culpable homicide not amounting to murder (Section 149 of the Indian Penal Code). Why, because the number is reduced to three, these three should not be equally guilty u/s 304 of the Indian Penal Code, we fail to understand. If one man alone had committed the offence, he also would have been convicted u/s 304 of the Code. It is illogical to say because two others joined with him with similar weapons that therefore the offence committed by the three is reduced to the lesser offence of voluntarly causing grievous hurt. With all due respect to the learned Judge who decided it we find it impossible to agree with the opinion expressed in the case of Emperor v. Chandan Singh I. L. R.(1917) All. 103. If the facts were as they are reported, then the offence in our opinion was not even one u/s 304 of the Indian Penal Code. It was a cruel and a brutal assault, premeditated and committed for the purpose of revenge upon an unfortunate man. The offence committed appears to us nothing more or less than murder and all three accused were equally guilty, as they were clearly moved by the same intent and had the same

object and all three used lethal weapons. We do not agree with the view of the law taken in that case, and in that respect we would point out that it was quite inconsistent with the remarks to be found in the case of Emperor v. Hanuman I. L. R(1913) . All. 560. The remarks at page 563 are worthy of note. They run as follows:--"It is impossible to prove by direct evidence the intention of a particular individual. The intention can only be inferred from the reasonable and probable result of his act or conduct. The learned Judge seems to confuse the meaning of the term intention with desire. It is quite possible that these persons had no wish either collectively or individually to kill Sheoratan (as is, indicated by the fact that no wound was discovered on his head), but nevertheless, if they beat him in the way it is proved that they did, they must be taken to have had knowledge that their act must in all probability cause death or such bodily injury as was likely to cause death, and if so, they are guilty of murder. Under circumstances such as these, it is quite immaterial to ascertain whose blow was the immediately fatal one." The learned Judges who decided that case distinctly dissented from the rule of law laid down in the case of Dhian Singh v. King Emperor I.L.R(1916) . All. 127 which was a judgment of a single Judge of this Court. They distinctly say "we cannot agree with the rule of law laid down in Dhian Singh v. King Emperor," We would also call attention to the decision of this Court in the case of King-Emperor v. Newaz (1917) 15 A.L.J. 315. This was similarly a case of three men who with the same intent and object attacked one other. They were armed with lathis. They inflicted serious injuries which resulted in death. All three of them were found guilty of the offence of murder. These cases no doubt are distinguishable from the case before us, for here the matter was a sudden one, it sprang up suddenly and the injuries were inflicted in the heat of, passion. We think that the case falls within exception 4 of Section 300 of the Indian Penal Code. We, therefore, alter the conviction in the present case from one u/s 325 of the Indian Penal Code to one u/s 304 of the Indian Penal Code, and in view of the circumstances of the case, we do not think it necessary to enhance the sentences that hate been passed.