
(1912) 11 CAL CK 0001

Calcutta High Court

Case No: Appeal No. 706 of 1912

Kalu Khalashi and
others

APPELLANT

Vs

The King-Emperor

RESPONDENT

Date of Decision: Nov. 5, 1912

Citation: (1912) 11 CAL CK 0001

Final Decision: Allowed

Judgement

1. The learned Sessions Judge, in agreement with one assessor and in disagreement with the other, has convicted the three Appellants of the offences made punishable by sec. 147 and by sec. 304 read with sec. 149 of the Penal Code. For the latter offence he has sentenced them each to undergo rigorous imprisonment for three years, no separate sentence being passed under sec. 147. There can be no doubt that on the morning of the 25th February last, a riot occurred in the course of which one Abbas Khalashi received injuries to which he very soon afterwards succumbed without recovering consciousness. The first intimation of the occurrence received by the Police was a written report by a dafadar. In that report it is stated that the accused persons, of whom eight are named, had been seized and detained by the dafadar and a chaukidar. As in any view of the case the Appellants are not the persons mainly responsible for the riot, the point was taken on their behalf that the record contains no very clear indication why the principal accused were not sent up for trial. Probably, the language of the report is loose; and inaccurate and the principals contrived to evade arrest. However that may be, the main ground on which the appeal was argued and the ground on which we shall deal with it, is that the Judge has disbelieved and rejected so much of the evidence for the prosecution that no secure basis is left for the verdict against the Appellants. It is difficult to resist the force of this argument. This is not a case in which the story told by the witnesses on the one side or the other has in substance been accepted and acted upon or in which there is evidence on the one side or the other in support of the facts found. Here no witnesses were called for the defence and the Judge has discarded almost in their entirety the accounts of the occurrence given by the witnesses for the prosecution and has

substituted a narrative of his own founded for the most part on surmise and conjecture. The cause of the dispute, it appears, was a straying bullock. According to the case for the prosecution the bullock belonged to Hishabdi, the principal person on the side of the Appellants, and the witnesses speak to an incident which took place two days before the riot, and to proposals for arbitration on the following day, which came to nothing. All this the Judge regards as pure invention. The bullock, he finds, belonged not to Hishabdi, but to Taijuddi, the principal man on the prosecution side. The quarrel took place on the same day as, and just before, the riot. There was no attempt at arbitration. Taijuddi and some of his men rescued the bullock which had been captured by Hishabdi and were taking it away when they were attacked. They were not attacked while ploughing as they say themselves. The Judge accepts the evidence as to the spot where the chief assault was delivered and Abbas was wounded, because it is not far from Basiruddi's house to which Abbas was undoubtedly carried. But it is obvious that in regard to the origin of the disturbance and the course of events, the story as reconstructed by the Judge is wholly inconsistent with the story told by the witnesses. There may be indications in the evidence in favor of the Judge's view. But it cannot be said that his account of the matter is proved by testimony regarded as credible. In more than one instance the Judge prefers a statement said to have been made by a witness at the time to the differing statements afterwards made by the same witness on oath in Court, though the latter statements are in accord with the testimony of the other witnesses. This difficulty is increased by the fact that according to the Judge, Taijuddi and his followers were the first to take the aggressive. The Judge may or may not be correct in his deductions. But that is not the question. The question is how far his conclusions are justified by the evidence. In our opinion, as we have already indicated, the Judge has proceeded not upon evidence but upon conjecture. That being so we cannot affirm the conviction of the Appellants.

2. The result is that the Appeal is allowed and the Appellants are acquitted of the offences with which they were charged. If on bail they will be discharged from their bail bonds and if in prison they will be set at liberty.