

(1869) 04 CAL CK 0007

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Kabil Cazee and Others

RESPONDENT

Date of Decision: April 8, 1869

Judgement

Norman, J.

The prisoners have been convicted of the murder of Baber Ali Mira, and severally sentenced to transportation for life. The facts are that, on the 25th of Baisakh last about seventy or eighty persons belonging to a dol or party in Mouzah Bhojpore, called the Miras, were proceeding to a feast, to which they had been invited by the widow of Baboo Jan Shurif and Jijir Jan Shurif. They were in a body, beaded by the deceased man Baber Ali Mira. It had been rumoured in the village for some days previously that if the Miras went to the feast, there would be a disturbance.

2. At a point where the road divides into two branches, each of which leads to the house to which the Miras were proceeding, they were intercepted by a body of from 100 to 120 men, of the dol or faction of the Cazee, of which the prisoner, Kebil Cazee, is a leader. The Cazees came out of an empty homestead, where they had been seen sitting together in a body under a tamarind tree; many of the Cazees were armed with spears and shields; some with tentas or three-pronged spears used for taking fish. They refused to allow the Miras to pass. After some altercation, one of the Miras called out "mar salaka." The two parties then began to throw clods of earth at each other, and fight with lattees, Baber Ali Mira, who carried a gun, then stooped down and fired amongst the Cazees. On his firing, the Cazees retreated a little. The prisoner, Wahid Ali, separated himself from his party, and went a short way, a witness says some 10 or 15 cubits to the south-west, and sat down. He was wounded by the shot in the feet; and blood was flowing from each foot. The parties again commenced fighting; and in the melee, Baber Ali Mira was stabbed through the heart by a fish spear; and Baboo Allah wounded Kurban severely with a spear on the hip.

3. The prisoners appeal. And we have heard Mr. Mackenzie and Baboo Ummoranath Bose on their behalf.

4. We have no doubt of the propriety of the conviction of all the prisoners, except Wahid Ali. No aggression could be more wanton or deliberate than the attack on the Miras. In the month of Falgun, the widows had entertained the Cazees and all the other dols in the mouzah, except the Miras who were then excluded, because the Cazees said they could not go to the feast if the Miras were invited. The Miras were invited to a separate feast, in order that there might be no opportunity for a quarrel. A considerable number of the Cazees were armed with spears and other deadly weapons, to say nothing of lattees, while only two or three of the other party were so armed.

5. The evidence shows that, on the retreat of the Cazees, and before the renewal of the combat in which Baber Ail Mira was killed, the prisoner Wahid Ali had separated himself from his faction and sat down apart from them. He probably no longer had the same common object, as the members of the unlawful assembly from which he had so separated himself. It does not appear that he continued to urge on the others. He was apparently solely occupied by his own sufferings. He cannot be convicted u/s 149, unless he was a member of the unlawful assembly at the time of the committing the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Baber Ali Mira, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly u/s 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others, as he might have had, if he had continued with them.

6. We reverse the conviction of murder against Wahid Ali. It is not shown that Wahid Ali was armed with any deadly weapon. We, therefore, think he should have been convicted of rioting u/s 147. We convict him accordingly, and sentence him to two years" rigorous imprisonment.

Jackson, J.

7. I concur in the order my learned colleague would pass in this case, except as regards Wahid Ali. I am inclined to the opinion that he still remained a member of the unlawful assembly, and so far liable for the acts of its members, even when he was sitting down wounded a few paces on one side of those who were actively participating in the fight. In the commencement of the fight, he had been in the thick of it. He was wounded by some shot from a gun; and during the momentary cessation of the fight which followed on the firing of the gun, he managed to leave the rest of the rioters so far as to be out of the actual hand-to-hand fight which recommenced, and in the course of which, a man was killed outright. But I think he still remained a member of the illegal assembly. The opinion of my colleague, as the senior Judge will however prevail, and the sentence passed on Wahid Ali, will be

reduced to two years" rigorous imprisonment.