

(1870) 02 CAL CK 0005

Calcutta High Court

Case No: Appeal No. 72 of 1870

In Re: Golam Arfin and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 19, 1870

Judgement

Loch, J.

Of the five prisoners who have appealed in this case nothing has been said in favour of Golam Arfin, who, it is admitted, is proved by the evidence to have been the person who struck the blow which caused the death of the deceased. With regard to the other prisoners, it is urged that the murder of the deceased was not the common object of the parties, but their common object was, as has been found by the Judge, the abduction of Rupa Bibi; that Ferman Bibi, her daughter, in trying to prevent Rupa Bibi being carried off, was struck down by Golam Arfin, and as this murder was not the common object of all the other prisoners, they are entitled to a mitigation of the punishment awarded by the Judge. Looking at the terms of section 149 of the Indian Penal Code, we find that if an offence is committed by any member of an unlawful assembly, in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in "prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty "of that offence." Now the facts of this case are not denied. It is proved that the prisoners did come to carry off Rupa Bibi; that they were at that time members of an unlawful assembly; that they came armed; and that one of their members did strike down and kill Ferman Bibi, with a weapon similar to that with which all of them were armed. Nor can it be doubted that the members of this assembly knew that such a result would follow the attempt which they were about to make to carry off Rupa Bibi, and they were prepared to resist any attempt that might be made to prevent them from accomplishing their design, and they were prepared to use just such a lethal weapon, as one of the members of that assembly did use, and thereby caused the death of Ferman Bibi. It appears to us, therefore, that the finding of the Judge is correct; and that the sentence passed upon the prisoners is a proper one, and that this

appeal must be dismissed.