

(1912) 06 CAL CK 0054

Calcutta High Court

Case No: None

Jhakri Chamar and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: June 18, 1912**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 100, 148, 304, 34, 99

Citation: 17 Ind. Cas. 1001**Hon'ble Judges:** Imam, J; Carnduff, J; Ashutosh Mookerjee, J**Bench:** Full Bench

Judgement

1. This is an appeal on behalf of three persons, Jhakri Chamar, Jhonti Chamar and Lungi Chamar, who have been convicted by the Sessions Judge of Bhagalpur under Sections 304 and 148 of the Indian Penal Code and sentenced to rigorous imprisonment for a term of three years under each section, the sentences to run concurrently. The appeal was heard in the first instance by Mr. Justice Carnduff and Mr. Justice Imam. There was no appearance on behalf of the accused or of the Crown before the learned Judges; upon an examination of the record, Mr. Justice Carnduff came to the conclusion that the convictions and sentences ought to be affirmed; Mr. Justice Imam took the contrary view and held that the appellants ought to be acquitted. The appeal has been placed before me u/s 429 of the Criminal Procedure Code. I have had the advantage of full and able arguments, both from Mr. Roy who appeared as amicus curi on behalf of the accused and from the learned Advocate-General who appeared in support of the conviction. Since the close of the argument, I have minutely scrutinised every paper on the record, and I shall now proceed to set out the conclusions at which I have arrived.

2. There is no room for doubt on the evidence that on the night of the 18th November 1911, Raj Kumar Singh, one of the proprietors of village Nurpur, was assaulted by a large number of men and was so severely beaten that he was killed on the spot. The evidence makes it plain that Raj Kumar Singh was a man of

dissolute habits, and that he took advantage of the position of influence he occupied in the village, to visit the houses of the residents, and, in many instances, to ravish their women. It is also incontestable on the evidence that on the night on which he met with his death, he had visited a house in which a young Chamar woman Sarbatia and her sister-in-law Jogia were sleeping. The question has been raised in these proceedings whether Raj Kumar had an assignation with Sarbatia or whether he had gone to the house to violate her according to his accustomed mode. There is no foundation, in my opinion, for the theory of assignation. Sarbatia, who was examined on behalf of the prosecution, asserted that she had never met or known the deceased and Jogia substantially supported her statement in the Court of first instance. I see no reason to disbelieve these statements. The theory, moreover, is inconsistent with what is conclusively proved to have happened; as soon as the women saw the man enter the house, they cried out "thief, thief," which brought to the spot the neighbours in large numbers. If his visit was pre-arranged, he would be expected and would be received in a very different manner by the women concerned. I must take it, therefore, as conclusively established on the evidence that on the night of the 18th November 1911, Raj Kumar Singh sallied forth on one of his usual nocturnal expeditions of debauchery and licentiousness, and went to the house where Sarbatia and Jogia slept. Their shouts attracted the notice of the male members of the household and also the neighbours in the surrounding houses; the result was that a large number of men collected on the spot. The question which next requires consideration is, whether the three appellants, one of whom is the husband of Sarbatia, another her brother-in-law and the third her father-in-law, were in the assembly I think it is proved beyond reasonable doubt that they were on the spot; but before they could render any effective help, Raj Kumar Singh had entered the room and was violating the girl Sarbatia. I think it is further established that the three appellants went inside the room and assaulted Raj Kumar Singh while he was on the bed. The evidence of Sarbatia indicates that at this stage she escaped from the room. What followed subsequently is involved in some obscurity, but this much is clear that Raj Kumar Singh came out of the room. He was assaulted by the people who had collected on the corridor, and, subsequently beaten to death in the court-yard by the villagers who had in the interval collected in large numbers. The evidence, in my opinion, does not indicate the nature of the injuries inflicted by the appellants upon the deceased while he was on the bed. The evidence also fails to indicate, with any approach to certainty, that the appellants took part in the assault upon the deceased either in the corridor or in the court-yard. The statements of the witnesses as to what happened at this stage are vague and uncertain. Three of these, Kowleswar, Darogi and Rajan, are of little value, even according to the Sessions Judge, and I see no reason to differ from him in his estimate of the weight to be attached to their assertions. Sarbatia herself has been regarded by the Sessions Judge, as not wholly trustworthy; at any rate, after she had escaped from the room from the hands of her ravisher, she did not see what happened in the corridor and in the court-yard. The evidence of the approver, Botha Chamar, is

obviously unreliable, and, in the course of his examination, he had to be warned that if he did not tell the whole truth, he would find himself in trouble. He gave a long string of names of persons whom he, saw in the assembled crowd; as to several of these, his statement has not been accepted by the Sessions Judge. The witness Mankida also is unreliable, and I am unable to say that the approver has been corroborated, upon the question of what took place in the corridor and in the court-yard, by any reliable or independent evidence. It is finally noteworthy that there are serious allegations against the Police which have not even been attempted to be effectively contradicted. Jogia asserted that she was beaten and threatened and taught to give her evidence in a particular way by the Police at the Nathnagar outpost. Manlcia made a similar statement and asserted that she had been threatened by the Head Constable of Nathnagar. In the face of evidence of this character, I am unable to hold that the appellants took part in the assault upon Raj Kumar Singh after he had escaped from the room. In so far as the assault upon him, while he was on the bed, is concerned, I think the appellants are protected u/s 100, Clause 3, of the Indian Penal Code. It may be conceded that the right of private defence was not specifically urged in the course of the trial, but even if it be assumed, as appears to have been laid down in the case of *Asiruddi Ahmed v. King-Emperor* (1) that when one man takes away the life of another man, the onus is on him to show the circumstances which justify his act in law, it is clear that no question of burden of proof arises in the present case. As to the assault upon the deceased while he was on the bed inside the room, the facts are perfectly plain. No doubt, as laid down in the case of *Jairam Mahton v. Emperor* 35 C. 103 : 7 Cri. L.J. 123 the right of private defence is a restricted right and Section 100 of the Indian Penal Code has to be read subject to the provisions of Section 99; yet it is plain that the assault upon Raj Kumar Singh, while he was in the very act of violating Sarbatia, brings the case within Section 100 even as qualified by Section 99. His assailants, the present appellants, undoubtedly, did not cause his death, and though one of them had an axe in his hand, there is no evidence as to the precise character of the assault. This much is fairly clear that Raj Kumar was able to escape out of the room, was assaulted by about ten men in the corridor, and finally got into the court-yard where he was beaten to death. This, therefore, is clearly not a case like *Kabiruddin v. Emperor* 35 C. 368 : 12 C.W.N. 384 : 7 C.L.J. 359 : 7 Cri. L.J. 256 : 3 M.L.T. 385 where two parties armed themselves and deliberately engaged in a fight. Nor is there any analogy between the present case and that of *Queen v. Gour Chunder* 24 W.R. Cr. 5 to which my attention was invited by the learned Advocate-General. In that case, it was proved that each of the accused took part in beating a person so as to break 18 ribs and cause his death; each was, therefore, hold (sic) of murder as a principal. I am further of opinion that neither Section 34 nor Section 148 of the Indian Penal Code is of any assistance to the prosecution. The essence of Section 34 is common intention, as the presence of a common object is requisite to establish a case u/s 148. As I have stated already, I am not prepared to find on the evidence that the appellants took part in the assault upon the deceased after he had escaped from the

room; whether the assault upon him in the corridor and in the court-yard was the result of a common intention, it is unnecessary to consider; it may be a matter of some nicety to determine whether when a large body of men, each of whom has a grievance against an individual on account of his misconduct, assaults him, they can be rightly regarded as guilty of a criminal act committed in pursuance of a common object or in furtherance of a common intention. In so far as the present appellants are concerned, I find that they assaulted Raj Kumar Singh while he was on the bed ravishing Sarbatia, that they did not exceed their right of private defence, and that they are not shown to have taken any part in the assault upon Raj Kumar after he had escaped from the room and come to the corridor and finally to the court-yard; they cannot, therefore, be convicted of an offence under Sections 304 and 148 of the Indian Penal Code. The view I take is supported by the decision in *Pachkauri v. Queen-Empress* 24 C. 686 at p. 691 : 1 C.W.N. 423. Whether the persons who assaulted the deceased and killed him in the court-yard could have been identified and successfully prosecuted for what they obviously considered to be an act of just retribution, is a matter which does not concern me.

3. The result, therefore, is that in concurrence with Mr. Justice Imam, I allow this appeal, set aside the convictions and sentences upon the appellants, and direct that they be acquitted and released forthwith.