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**(1930) 08 CAL CK 0025**

**Calcutta High Court**

**Case No:** None

Upendra Nath Ta and Another

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Aug. 26, 1930

**Citation:** 129 Ind. Cas. 676

**Hon'ble Judges:** Zahhadur Rahim Zahid Suhrawardy, J; Mallik, J

**Bench:** Division Bench

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### **Judgement**

Mallik, J.

The two appellants Upendra Nath Tah and Haripada Nandi have been convicted in a Jury trial u/s 325, Indian Penal Code, and sentenced to rigorous imprisonment for two and a half years each. The facts of the case for the prosecution were briefly these. One Purna Tah was lying on the road-in front of his he use in the evening of the 7th April last when one Dharmadas Mondal the rival zemindar of Purna's master and his sworn enemy came there accompanied by Upendra, Haripada and the other three accused and two other men and under the orders of Dharmadas, Upendra and Haripada began belabouring Purna with lathis with the result that Puma's legs were fractured. Puma's brother Nibaran who had gone to a cow-shed nearby, on hearing the cry of Purna came up and on seeing him Purna's assailants all ran away. Purna was taken to the he spital the same night and on the 8th in the morning his leg had to be amputated. Purna's dying declaration was recorded at 1 A.M. on the 9th of April and Purna expired on the 10th. On these facts the two appellants and three other men Kalipada Tah, Indra Nath Karfa and Keshab Chandra Pal were put on their trial on charges under Sections 147, 304 and 304/149, Indian Penal Code. The Jury found all the 5 men not guilty of any of these charges, but found Upendra and Haripada guilty u/s 325, Indian Penal Code, and the Judge accepting this unanimous verdict of the Jury, sentenced the two appellants in the way as stated before. The charge of the learned Judge to the Jury was assailed before us on a number of grounds, but the grounds which deserve consideration were three in number. First of all it was said that the learned Judge had not given sufficient

directions to the Jury in connection with the dying declaration of Purna. It was said that the learned Judge ought to have told the Jury that there had been a long delay in recording the dying declaration of Purna. I do not think there is any substance in this contention.

2. The necessity of recording a dying declaration arises only when the hopes of life of the man are given up. I have stated before, the dying declaration was recorded at one in the morning of the 9th and there is nothing in the evidence to indicate that the hopes of life of Purna had been given up before that hour. It was at that hour only that it was thought that the man would not live and the Magistrate had to be summoned at that hour of the night to record the man's dying declaration.

3. It was contended that the directions which the learned Sessions Judge gave to the Jury in connection with the offence u/s 325, Indian Penal Code, were not sufficient and, in this connection, our attention was drawn to the following observation of the Judge in his charge. "Both bones of the leg were broken. If the prosecution story is true that Purna was struck with lathis until his leg was broken, there cannot be any doubt that the persons who so struck him with lathis intended to break his leg, or knew that they were likely to break his leg. They will, therefore, be guilty of the offence of voluntary grievous hurt u/s 325, Indian Penal Code." But this is not the only observation that the learned Judge made in his charge to the Jury on the point. He explained to the Jury Section 34 of the Indian Penal Code and after explaining the section to them proceeded to observe as follows: "This Section (34), therefore, applies when more than one person cooperate with each other in bringing about an effect, intended by each of them. In the present case, Upendra and Haripada have been charged with thus co-operating to cause the death of Purna. If you think they co-operated not to commit an offence u/s 304, but to commit a lesser offence, e.g., one u/s 325 or u/s 323 you will say so." The Judge also observed "a sane adult may be presumed to intend the natural probable inevitable consequences of his deed." Taking these observations together, we do not think it could be reasonably contended that the directions which the learned Judge gave to the Jury on the question of the offence u/s 325, Indian Penal Code, were in any way inadequate or insufficient.

4. The third and last point taken was that the learned Sessions Judge had not in his charge to the Jury discussed the question whether there was a hurricane lantern near Purna at the time of the occurrence. It appears that there was a hurricane lantern quite close to the place where the man was assaulted and it appears also that, Nibaran, Purna's brother, in his deposition stated that he had gone to the cowshed with a hurricane lantern. It was said that the learned Judge ought to have drawn the attention of the Jury to the fact that if Nibaran's evidence was to be believed, there could not have been a hurricane lantern near Purna at the time of the occurrence. But the statement that Nibaran made on the point was that when he had gone to the cowshed he had gone there with his hurricane lantern and no

cross-examination was directed to elucidate the point whether there was only one hurricane lantern or two. In these circumstances, when apparently it was nobody's case that there was only one hurricane lantern at the place it was, in my opinion, no part of the duty of the learned Judge to draw the attention of the Jury particularly to the statement of Nibaran when he said that he had gone to the cowshed with his hurricane lantern. We are unable, therefore, to hold that there has been any misdirection or non-direction in the charge of the learned Judge to the Jury. The Charge seems to us to be a very fair one and no point appears to us to have been left out which, in view of the evidence in the case, might have been legitimately urged in favour of the accused.

5. In this view of the matter, and in view of the fact that we do not consider the sentence of two and a half years' rigorous imprisonment u/s 325, Indian Penal Code, to be at all severe, the appeal must stand dismissed.

Suhrawardy, J.

6. I agree.