
(1870) 04 CAL CK 0011

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Gobardhan Bhuyan

RESPONDENT

Date of Decision: April 9, 1870

Judgement

Jackson, J.

The prisoner in this case was charged with the murder of Jaguvo Bhuyan, and he pleaded "guilty." On that plea, the Judge considering it unnecessary to hold a formal trial, proceeded to take into consideration the circumstances which appeared in the depositions taken by the Magistrate, and, thereupon reduced the plea of guilty which he had recorded, to a plea of guilty of the offence of culpable homicide not amounting to murder; and for this purpose, he has in favour of the prisoner brought the case within the second exception appended to section 300 of the Indian Penal Code which defines the offence of murder. That exception is in these words culpable homicide is not murder, if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence." The facts, as they appear from the depositions, are, that the accused and the deceased, with a third person, met one day at a liquor shop, and there drank together; that they afterwards walked in company, the third person just mentioned being a little ahead of the other two; and that while these two were walking together, an altercation took place in respect of the deceased person having, as alleged by the prisoner, caused the death of the prisoner's four children by his incantations. According to the prisoner's account the deceased admitted that he had so caused their death, and added that he would also bring about the death of the prisoner; in short, that he would not allow him to quit that jungle, but would cause him to be taken by a tiger. Thereupon the prisoner states that he killed the deceased with several blows of a heavy lati.

2. The Judge looking upon the accused as an ignorant savage, who, probably, believed that the deceased had the power of bringing about his death in the way mentioned, considers the accused to have acted in the exercise of his right of private defence, but that in the exercise of that right, he went further than the law allowed, and therefore, brings him under the second exception of section 300.

3. It seems to me that this view of the case is altogether untenable. The right of private defence is described in section 97 of the Indian Penal Code, and it is there stated, that, every person has a right, subject to the restrictions contained in section 99, to defend his own body and the body of any other person, against any offence affecting the human body." Offence denotes a thing made punishable by the Penal Code. And the third restriction contained in section 99 is that there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities and section 102 provides that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence," though the offence may not have been committed. I think, making every allowance for the possible ignorance of the accused, it cannot be said that there was any reasonable apprehension of danger to the body from the idle words used by the deceased man when perhaps excited by drink.

4. Moreover the fourth restriction contained in section 99 provides that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence." It seems to me therefore that in every point of view the plea gratuitously set up for the prisoner by the Judge is untenable, and that the exception relied on will not apply.

5. But, in any case, the proceedings of the Sessions Judge appear to have been irregular. Upon the prisoner pleading guilty the Judge might, if he had thought fit, have convicted him upon his plea, and therefore he must have convicted him of the offence of murder to which he had pleaded guilty; but if he did not think fit to convict him upon that offence, he should have proceeded to try him, and thereupon he would have had to take all the evidence forthcoming, in order to determine whether the prisoner had committed the offence of murder, or any other offence with which he was charged.

6. There was, it seems, an eye witness of what took place, and although that witness was not perhaps sufficiently near to have heard the words which passed between the accused and the deceased, he could have given very important testimony in the case; and at any rate, as he actually saw the accused inflict the blows which undoubtedly caused the death of the deceased, it would have lain open to the prisoner to bring himself within any exception which could reduce his offence from murder to a crime of less gravity.

7. I think therefore we have no choice but to quash the proceedings, and direct that the prisoner be again brought before the Court of Session, and that the Judge either convict him on his plea or proceed to try him on the several heads of charge.

Glover, J.

I concur there can be no doubt that the Sessions Judge has taken an entirely wrong view of the law.