

1907

SRI RAM
v.
HET RAM.

that subsequent applications will be regulated by article 179, clause (4) of the second schedule of the Limitation Act, and not by article 178. For these reasons I concur with the judgment just delivered that the present appeal must succeed.

BY THE COURT.—The appeal is decreed and the decrees of both the Courts below are set aside and these proceedings are remanded to the Court of first instance, through the lower appellate Court, under section 562 of the Code of Civil Procedure with directions that the Court of first instance readmit them on the file of pending proceedings and dispose of them according to law. We make no order as to the costs of this appeal or the costs hitherto.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

1907
January 16.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR v. BHOLA SINGH AND ANOTHER.*

Act No. XLV of 1860 (Indian Penal Code), sections 304 and 325—Assault by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt.

Three persons attacked a fourth with lathis, and one of the assailants struck a blow which fractured the skull of the person attacked and caused his death, but the evidence left it in doubt which of the three assailants struck that blow.

Held that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder. *Queen Empress v. Dama Baidya* (1) followed.

THE facts out of which this case arose were as follows:—In execution of a decree of the Small Cause Court against Bhola Singh and his son Jauhari, the decree-holder Banke Lal went to attach their property. He was accompanied by the Civil Court bailiff and his chaprasi, Ganeshi Lal his own servant, one Ram Chand a neighbour, and others. When these persons were seen approaching, the accused untied their cattle and drove them off to the jungle. One buffalo was seized, and Ganeshi Lal and Ram Chand went in search of the rest of the cattle. Bhola Singh and Jauhari, and another son Khem Sahai who absconded

*Criminal Appeal No. 1020 of 1906.

(1) (1896) I. L. R., 19 Mad., 483.

1907

 EMPEROR
 v.
 BHOLA
 SINGH.

subsequently, went after them and attacked them with lathis. Ganeshi Lal received from one of the three a lathi blow on the head which fractured his skull and killed him, the witnesses, however, though they saw the three men hitting Ganeshi Lal with lathis, were too far off to be able to say which one of them struck him on the head. Bhola Singh and Jauhari were convicted by the Sessions Judge of Agra and sentenced to transportation for life under section 304 of the Indian Penal Code. They appealed to the High Court.

Babu *J. N. Mukerji*, for the appellants.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

BANERJI and AIKMAN, JJ.—This is an appeal by Bhola Singh and his son Jauhari against their conviction under section 304 of the Indian Penal Code and the sentence of transportation for life passed on each of them. It appears that a Civil Court Amin went to attach the cattle of the accused in execution of a decree of a Court of Small Causes. He was accompanied, among others, by one Ganeshi Lal, a servant of the decree-holder. When the Amin's party was seen approaching, the accused untied their cattle and drove them off to the jungle. One buffalo was seized, and Ganeshi Lal and another man, Ram Charan, went in pursuit of the other cattle. The appellants and Khem Sahai, another son of Bhola Singh, who has absconded, went after them and attacked them with lathis. Ganeshi Lal received a blow on the head which fractured his skull, and also injuries on the right side of the chest. As a result of the blow on the head he died shortly afterwards. These facts are fully proved by the witnesses for the prosecution. None of them, however, is able to say whose blow caused the fracture of the skull which resulted in Ganeshi Lal's death. The question therefore is whether on the evidence the two appellants can be convicted of causing the death of Ganeshi Lal. As it has not been proved that the appellants or either of them struck the fatal blow, and as there is nothing to show that there was a common intention on the part of all the three assailants to inflict such injury as was likely to cause death, we are of opinion that the appellants cannot be convicted of the offence punishable under section 304 of the

1907

EMPEROR
v.
BROLA
SINGH.

Indian Penal Code. In the absence of evidence to show that there was a common intention to cause death or such injury as was likely to cause death we think that section 34 of the Indian Penal Code would not apply. Our view is supported by the ruling in *Queen-Empress v. Duma Baidya* (1). In that case three persons assailed the deceased and gave him a beating in the course of which one of the prisoners struck the deceased a blow on the head which resulted in his death. All three were convicted of causing the death of the deceased, and were sentenced to transportation for life. In appeal the learned Judges, whilst sustaining the conviction of the accused who had struck the fatal blow, held that in the absence of proof that all the prisoners had a common intention to inflict injury likely to cause death, the other accused could not be convicted of murder. We have now to consider of what offence the appellants should be convicted. We think that, having regard to the fact that lathis were used by all the three assailants, and that the probable result of the use of lathis was at least grievous hurt, the common intention of the assailants may be deemed to have been to cause grievous hurt. We are therefore of opinion that all of them must be held to be guilty of causing grievous hurt. We so far allow the appeal as to set aside the conviction under section 304 and the sentence of transportation for life, and, convicting the appellants under section 325 of the Indian Penal Code, sentence each of them to rigorous imprisonment for five years with effect from the 4th of October 1906.

1907
January 16.

APPELLATE CIVIL.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.
KANHAYA LAL AND OTHERS (DEFENDANTS), v. SARDAR SINGH
(PLAINTIFF).*

Act No. III of 1877 (Indian Registration Act), sections 76 and 77—Registration—Suit to compel registration—Grounds of such suit.

Where a Registrar refused to register a document presented to him upon the grounds that there was not sufficient proof that the document was executed by the authority of the alleged executant and that there was undue and unexplained delay in presenting the document for registration, it was held that a

* First Appeal No. 65 of 1906 from an order of Babu Daya Nath, Subordinate Judge of Farrukhabad, dated the 12th of April 1906.

(1) (1890) I. L. R., 19 Mad., 483.