

## APPELLATE CRIMINAL.

1909

July 13.

*Before Mr. Justice Tudball and Mr. Justice Alston.*

EMPEROR v. SULTAN SINGH AND OTHERS.\*

*Criminal Procedure Code, section 345—Compromise—Assault in the course of which one of the persons assaulted received fatal injuries.*

Three persons assaulted three others, with the result that one of the persons assaulted died. *Held* that it was not competent to the survivors to compound the case with their assailants in respect of the injuries caused to the person deceased.

In this case three persons, Sultan Singh, Sahab Singh and Chhote Singh were charged with having rescued certain cattle from Tikam Singh and Hari Lal Singh, into whose field they had trespassed, and with having then attacked the two men with lathis and assaulted them as well as one Kulfat Singh. The result of the fight was that Tikam Singh died after a few days. Hari Lal Singh and Kulfat Singh sustained only simple injuries. The post mortem disclosed the fact that Tikam Singh's skull had been fractured. When the case came before the Magistrate, he took the evidence for the prosecution and then recorded the following order:—"In this case it is quite clear from the medical evidence that no more than an offence under section 323 of the Indian Penal Code was committed in respect either of Tikam Singh or of Hari Lal Singh; in fact, the injuries of the latter, directly sustained from the blow, were more serious. The accused, who do not seem to have been much more in the wrong than the others, have made amends, and the case is compromised. I therefore acquit Sultan Singh, Sahab Singh and Chhote Singh under section 345 of the Code of Criminal Procedure. Against this order the Local Government appealed on the main ground that the Magistrate had no jurisdiction after the death of Tikam Singh to allow the case to be compounded.

Mr. W. Wallach, (Government Advocate) for the appellant.

The respondents were not represented.

TUDBALL and ALSTON, JJ.—This is an appeal by the Local Government against an order of acquittal passed by a first class Magistrate, under the following circumstances. Three persons, Sultan Singh, Sahab Singh and Chhote Singh, were charged with

\* Appeal No. 398 of 1909, by the Local Government, from an order of D. M. Stewart, Magistrate of the first class of Aligarh, dated the 1st of April 1909.

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having rescued certain cattle from Tikam Singh and Hari Lal Singh, into whose field they had trespassed, and with having then attacked the two men with lathis and assaulted them, as well as one Kulfat Singh. The result of the fight was that Tikam Singh died after a few days. Hari Lal Singh and Kulfat Singh sustained only simple injuries. The post mortem disclosed the fact that Tikam Singh's skull had been fractured. When the case came before the Magistrate, he took the evidence for the prosecution and then recorded the following order:—"In this case it is quite clear from the medical evidence that no more than an offence under section 323 of the Indian Penal Code was committed, in respect either of Tikam Singh or of Hari Lal Singh; in fact the injuries of the latter, directly sustained from the blow, were more serious. The accused, who do not seem to have been much more in the wrong than the others, have made amends, and the case is compromised. I therefore acquit Sultan Singh, Sahib Singh, and Chhote Singh under section 345 of the Code of Criminal Procedure." It is unnecessary for us to go into the merits of the case, because the above order is on the face of it illegal. Hari Lal Singh and Kulfat Singh, no doubt, were competent to compound the case, in so far as it concerned the injuries committed upon their persons. But in regard to the offence committed against Tikam Singh, the only person who could have compounded was Tikam Singh himself. This is clearly shown by the terms of section 345 of the Code of Criminal Procedure. It shows that the person to whom the hurt is caused is the only person who can compound. Therefore, even if the offence committed only amounted to one under section 323 of the Indian Penal Code, as to which we express no opinion, the order of acquittal on compromise was clearly illegal. We therefore set aside the order of acquittal, and in view of the fact that the case has not been fully tried out, we, under section 423 of the Code of Criminal Procedure, order that further inquiry be made into the case, leaving it to the Magistrate to deal with it himself, or to commit it for trial according as the evidence before him opens out. As we think that it would be advisable that the case be tried by some competent Magistrate other than the one who passed the order now reversed, we order accordingly. We leave it to the District Magistrate to select the court which will make this further inquiry.

*Retrial ordered.*