1913
August, 5.

APPELLATE CRIMINAL.

Before Mr. Justice Sir Pramada Charan Banerji and Mr. Justice Ryves.

EMPEROR *v.* HANUMAN AND OTHERS. *

Act No. XLV of 1860 *(Indian Penal Code), sections* 37, 302, 304 *—Murder—Culpable homicide not amounting to murder—Fatal assault with* lathis *by several persons acting in concert.*

Five men—members of the same family—assaulted an unarmed man and beat him with their *lathis*. They knocked him down and continued beating him, with the result that he died then and there. Another man, who came to the rescue of the first, was also knocked down and beaten by the same five men with a similar result.

Held that all five men were in each case guilty of the offence of murder. *Dhian Singh* v. *King-Emperor* (1) dissented from.

THIS was an appeal from jail by three persons out of four who had been convicted by the Sessions Judge of Mirzapur of the offence of culpable homicide not amounting to murder, under section 304 of the Indian Penal Code and sentenced to seven years' rigorous imprisonment. On this appeal coming up for hearing before a single Judge, notice had been served on all four men to show cause why they should not be convicted of murder under section 302 of the Indian Penal Code and sentenced accordingly.

The facts of the case are fully set forth in the judgement of the Court.

The Government pleader (Babu *Lalit Mohan Banerji*), for the Crown.

The appellants were not represented.

BANERJI and RYVES, JJ.—In this case four persons, Hanuman, Tippal, Sheoraj and Shankar, were convicted by the learned Sessions Judge of Mirzapur, under section 304 of the Indian Penal Code, and sentenced to transportation for seven years on two counts; the sentences were to run concurrently. All of them, except Shankar, appealed from their convictions and sentences to this Court. The learned Judge before whom the appeal came for hearing directed that notice should issue to all four of them to show cause why their conviction should not be altered to one under section 302 of the Indian Penal Code, and why they should not be sentenced to

* Criminal Appeal No. 482 of 1913, from an order of I. B. Mundle, Sessions Judge of Mirzapur, dated the 24th of May, 1913.

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death or to transportation for life. Notice has been served on all four. The facts of the case are very simple. Tippal and Sheoraj are the sons of Bori, who has absconded, and Shankar and Hanuman are their first cousins. Early in August, 1912, there was a dispute between Bori on the one hand and Sheoratan and Madhwa, the deceased, on the other, about some mangoes, and, as was natural, a good deal of abuse was exchanged. On the evening of the 17th of August last, Sheoratan was returning to his home shortly before sunset. As he passed Bori's house, Sheoraj caught hold of him round the waist. Sheoratan struggled to get free and abused Sheoraj. Thereupon Bori called out to the four accused to beat Sheoratan. Bori, Tippal, Hanuman and Shankar came out of the inclosure in which all five lived, with *lathis*, and all of them beat Sheoratan, who was unarmed. They felled him to the ground and went on beating him as he lay there. Madhwa, cousin of Sheoratan, came running up with a *lathi* to help him. He struck Shankar a blow on the head, but was knocked down and beaten by all five. Gauri, the father of Sheoratan, then came up and was also knocked down and beaten and left unconscious. Musammat Maiki, the wife of Madhwa, threw herself on her husband's body and was also beaten, although not severely. Sheoratan and Madhwa died on the spot. The assailants then ran away. This version of the story is that generally given by the prosecution witnesses, and particularly by Puni, who is the brother of Bori, and, therefore, the uncle of all the four appellants. Nothing has been shown, in his cross-examination or otherwise, to indicate any bias or hostility against any one of the accused, and we agree with the assessors and the learned Judge in accepting his evidence as substantially true. It amounts to this. Five men armed with *lathis* assaulted Sheoratan, a young man of some thirty-three years of age, who was unarmed, and beat him with their *lathis*. They knocked him down and continued beating him, with the result that he died then and there. The medical evidence shows that his breast-bone was fractured and that injury was also caused to the pericardium, the result of *lathi* blows. The body was so decomposed when the *post mortem* examination was made that external marks of bruises could not be detected. While the accused were thus assaulting Sheoratan, Madhwa came up to the rescue of

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his cousin. He also was beaten to the ground and so severely belaboured that he died. The medical evidence shows that his skull was fractured, and so was his breast-bone, and that death was due to the fracture of the skull. It is thus clear that all the accused brought about the death of Sheoratan and Madhwa. The learned Sessions Judge on these facts has convicted them under section 304 of the Indian Penal Code. He says:—"Though the four accused can be imputed with knowledge of the likelihood that death might be caused, yet I think no intent can be presumed. Another reason why I think the charge of murder cannot be sustained is that it is not proved which of the five men, Shankar Hanuman, Tippal, Sheoraj and Bori dealt the fatal blows that resulted in actual death."

We are unable to agree with either proposition of law. Under section 299 of the Indian Penal Code, a person is guilty of culpable homicide who causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death. Under section 300, except in the cases thereinafter excepted, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or (4thly), if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

It seems to us that the case falls clearly within the 4th clause of section 300 of the Indian Penal Code. It cannot be said that any of the exceptions takes the case out of the section. The only exception which could possibly be suggested is exception No. 4, but here, even if there was no premeditation, which may be granted, there was no sudden fight, as Sheoratan was unarmed and taken by surprise. But even if we take it that in the case of Madhwa there was a sudden fight, the accused cannot take the benefit of the exception, because they took an undue advantage of their victim and acted in a cruel manner. Sheoratan was unarmed, Madhwa, although armed, was one against five. Both were instantly felled to the ground, and in this defenceless condition were beaten with

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such violence that they died on the spot. It is impossible to prove by direct evidence the intention of a particular individual. The intention can only be inferred from the reasonable and probable result of his act or conduct. The learned Judge seems to confuse the meaning of the term intention with desire. It is quite possible that these persons had no wish either collectively or individually to kill Sheoratan (as is indicated by the fact that no wound was discovered on his head), but nevertheless, if they beat him in the way it is proved that they did, they must be taken to have had knowledge that their act must in all probability cause death or such bodily injury as was likely to cause death, and if so, they are guilty of murder. Under circumstances such as these, it is quite immaterial to ascertain whose blow was the immediately fatal one. In the case of Sheoratan no single blow need necessarily have been the actual cause of death, which may have been due to the shock resulting from the many severe blows he received. They were all taking part in the beating, and all must be presumed to have known that the probable result of such a beating was that at least, such bodily injury would be caused as was likely to cause death. It did in fact cause the death of two persons in the prime of life. We cannot agree with the rule of law laid down in *Dhian Singh* v. *King-Emperor* (1). We, therefore, convict the four accused under section 302 of the Indian Penal Code. We set aside their conviction under section 304 of the Indian Penal Code and we sentence them under both charges with respect to the death of Sheoratan and Madhwa to transportation for life (to run concurrently) with effect from the 24th of May, 1913.

Appeal dismissed.

(1) (1912) 9 A. L. J., 180.