

1913

SRI KISHAN  
DAS  
v.  
YAKUB  
KHAN.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

The Hon'ble Pandit *Moti Lal Nehru*, for the respondents.

RICHARDS, C. J. AND BANERJI, J.—The decision of the court below in this case cannot be supported. Ismail Khan and Zarina Khatun were admittedly in possession of the property leased to them by the plaintiffs. To secure the rent which they agreed to pay for such use and occupation, they hypothecated their property. The present suit was one to enforce the hypothecation. The suit was clearly maintainable, and the court below was wrong in holding that because no *patta* was granted to the executants of the *kabuliat*, the rent agreed to be paid was not payable and the security for its payment could not be enforced. This case is similar in some respects to that of *Sheo Karan Singh v. Maharaja Prabhu Narain Singh* (1). We allow the appeal, set aside the decree of the court below and remand the case to that court under order XLI, rule 23, of the Code of Civil Procedure with directions to re-admit it under its original number in the register and to dispose of the other questions which arise in the case. The appellant must have the costs of this appeal. Other costs will follow the event.

*Appeal decreed and cause remanded.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Tudball and Mr. Justice Byves.*

EMPEROR v. RAM NEWAZ.

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

Three persons, brothers, attacked with *lathis* a fourth, against whom they bore a grudge, and beat him with great severity, so that he died shortly afterwards. His skull was badly fractured, and numerous other injuries were inflicted upon him. It did not appear which injuries were caused by which of the assailants, but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death. *Held* that all three assailants were guilty of murder. *King-Emperor v. Subbappa Okunnappa* (2) and *King-Emperor v. Kanhai* (3) followed *Emperor v. Bhola Singh* (4), *Queen Empress v. Duma Baiya* (5), *Govindas Namasudra v. Emperor* (6), *Empress v. Dharam Bai* (7) and *Dhian Singh v. King Emperor* (8) distinguished.

\* Criminal Appeal No. 401 of 1913 by the Local Government from an order of Pitambar Joshi, Sessions Judge of Banda, dated the 5th of March, 1913.

(1) (1909) I. L. R., 31 All., 276.

(5) (1896) I. L. R., 19 Mad., 483.

(2) (1912) 15 Bom. L. R., 303.

(6) (1908) I. L. R., 36 Cal., 659.

(3) (1912) I. L. R., 35 All., 329.

(7) Weekly Notes, 1887, p. 286.

(4) (1907) I. L. R., 29 All., 282.

(8) (1912) 9 A. L. J., 180.

1913

July, 17.

1913

---

EMPEROR  
v.  
RAM NEWAZ.

THIS was an appeal by the Local Government from an order of acquittal passed by the Sessions Judge of Banda in the case of one Ram Newaz, charged under sections 304 and 302 of the Indian Penal Code, with being concerned, along with his two brothers Ram Bharose and Ram Bisal, with causing the death of one Ram Saran. The facts of the case are set forth at length in the judgement of the Court.

The officiating Government Advocate (Mr. *W. Wallach*), for the Crown.

Mr. *D. B. Sawhny*, for the accused.

TUDBALL and RYVES, JJ. :—This is an appeal by the Local Government from a decision by the Sessions Judge of Banda, whereby he acquitted one Ram Newaz of the offences of murder and culpable homicide not amounting to murder under sections 302 and 304 of the Indian Penal Code. The accused was committed for trial together with his two brothers, Ram Bharose and Ram Bisal, on a charge under section 304 of the Indian Penal Code. The Sessions Judge added a charge under section 302 of the Indian Penal Code. He convicted Ram Bharose and Ram Bisal of the lesser offence under section 304 of the Indian Penal Code and acquitted them of murder. He sentenced them to ten years' rigorous imprisonment each.

In regard to Ram Newaz, though he found that he was present and took part in the assault on the deceased, he passed an order of acquittal. Ram Bharose alone appealed against his conviction.

A Bench of this Court (of which one of us was a member), on the record coming before it, issued notice to both Ram Bharose and Ram Bisal to show cause why they should not be convicted of murder and the sentences enhanced. In the result, the appeal of Ram Bharose was dismissed, the two men were convicted of murder and were sentenced to death. The case of Ram Newaz was not then before the Court and his guilt or innocence was not considered. The Local Government has now appealed against his acquittal, and we have to decide whether or not his alleged participation in the assault has been proved and, if so, of what offence he is guilty.

The case for the prosecution is a simple one. The evidence of Ram Dat and Sub-Inspector Wali Muhammad Khan shows

1913

---

EMPEROR  
v.  
RAM NEWAZ.

that Ram Bharose trespassed in the house of one Jasodia for the purpose of committing adultery with her daughter. On an alarm being raised, some neighbours arrived upon the scene, seized Ram Bharose and beat him. The deceased Ram Saran was one of them. Ram Bharose was prosecuted and convicted and sentenced in December, 1912, to four weeks' rigorous imprisonment, from which he was released some time in January last.

The case for the prosecution is that on the 24th of January, 1913, shortly before sunset, the three brothers—Ram Bharose, Ram Bisal and Ram Newaz met the deceased Ram Saran near a tank outside the village in which they all reside. The deceased was returning home from a neighbouring village. The three brothers were armed with *lathis*. They at once attacked Ram Saran, felled him to the ground and continued all three to beat him with their clubs as he lay. The witnesses, Gajadhar *Bharbunja*, Sheonath *Arack* and Sheonarain *Brahmin*, who were not far away, were attracted to the spot, and on their remonstrance the accused ran away. The relations of the deceased were summoned, and they removed the body. Ram Kishore, the brother of the deceased, proceeded to the police station, some eight miles distant, where at 8 p.m. a report was made as against all three of the accused. The presence of the witnesses, Sheonath and Gajadhar, at the scene, was also mentioned. Ram Saran died that same night as a result of the injuries inflicted by the three accused.

The medical evidence shows that the deceased was mercilessly and brutally beaten with clubs. On the crown of the head, there were two contused wounds and innumerable abrasions. One blow had been inflicted behind the right ear. On each arm there were two contused wounds and there was an injury to the left hand. There were marks of injuries on both knees and the mark of a blow on the waist. There was compound fracture of both bones of the left lower leg. The skull was found to have been fractured into four pieces. It is, therefore, evident that the deceased, as the medical witness states, had been cruelly beaten with *lathis*.

As to the actual facts of the assault, they are proved by the evidence of the witnesses, Gajadhar and Sheonath and Sheonarain. These are persons of different castes, and there is not a word in the evidence to show that they are otherwise than impartial

1919

---

EMPEROR  
v.  
RAM NEWAZ.

---

witnesses who have testified to the facts to the best of the ability of ignorant villagers. There are no doubt some trivial minor discrepancies, but none of such importance as to throw any doubt on their honesty or good faith. The evidence of Gajadhar shows that, while grazing his cattle that evening on the embankment of the tank, he noticed Ram Saran walking along at the foot of the embankment. He also saw the three brothers walking along the top of it. The next thing he noticed was that the three accused were beating Ram Saran at the foot of the embankment. He shouted to Sheonath, who was on the other side of the embankment, and the latter and also the witness Sheonarain ran up to see what was happening. Sheonath states that when he caught sight of the scene, the deceased was on the ground and the three accused were all striking him with their *lathis*. On the witnesses remonstrating, the accused persons ran away. Sheonarain corroborates. The witnesses admit that Ram Saran had a *lathi* and this is obvious by reason of the fact that one accused, Ram Bisal, bore the marks of two blows on his person when at 8 p.m. he arrived at the police station and made a report. Of course it is possible that he might have caused these two injuries to be inflicted on his person by his brothers, but it is far more probable that Ram Saran, when attacked, used his weapon in self-defence. Ram Bisal reported that he had found Ram Saran allowing his cattle to graze on the crops in his field (which is some 200 yards or more from the tank) and when he attempted to remove them Ram Saran called to his three brothers, who arrived and drove off the cattle, while Ram Saran himself struck Ram Bisal twice with his *lathi*. This was the case put forward by Ram Bisal in his defence, and in the judgement on his appeal the reasons for holding it to be false are set forth. The police officer who made the inquiry found blood stains at the foot of the embankment, which clearly indicate the spot where Ram Saran was beaten. This story, moreover, is clearly untrue and does not account in any way for the numerous and severe injuries found on the body of the deceased. We are here, however, concerned with the case of Ram Newaz. There can be no doubt of the truth of the prosecution story. The Judge and the assessors were unanimous in accepting it.

1913

EMPEROR  
v.  
RAM NEWAZ.

The defence of Ram Newaz was an *alibi*. The assessors stated that they accepted it. The Judge refused to do so, and held that Ram Newaz was present but probably did not take a prominent part in the assault. Ram Newaz gave his age as twenty years in the Magistrate's court. At the trial he said he was sixteen years old. His exact age is not clear, but we may take it that he is a young man approaching twenty years in age.

He called two witnesses to establish his *alibi*, one a Brahman and one an Arack, from the village of Tam Bani where his maternal uncles live. They say that one and a half months prior to their giving evidence the accused went to the village and stayed some twenty or twenty-two days with his uncle. Their village is some sixteen miles from the scene of the murder.

In addition to the reasons given by the Sessions Judge for not accepting this evidence, there is the fact that it is of a very vague and unreliable nature, and in the face of the clear evidence for the prosecution we are unable to accept it. We agree with the Judge that Ram Newaz was present and took part in the assault. The witnesses ascribe to him the same action as to the other two accused. Being the youngest of the three brothers, he may perhaps have been led into the matter by them, but we fail utterly to understand why the lower court acquitted him. He was present and actively aiding and abetting his brothers. The mere suggestion that he probably did not take a prominent part as the Sessions Judge has put it, is no good reason for acquittal, and we have, therefore, no hesitation in holding that Ram Newaz was present and did take part, using his *lathi* to beat the deceased. It is urged, on his behalf, that he can only be held guilty of an offence under section 325 of the Indian Penal Code and our attention is called to the decisions reported in *Emperor v. Bhola Singh* (1), *Queen-Empress v. Duma Baidya* (2) and *Gouridas Namasudra v. Emperor* (3), *Empress v. Dharam Rai* (4), *Dhian Singh v. King-Emperor* (5). In this respect, we must point out that the facts and circumstances of cases vary and each case has to be decided in view of its actual facts. We have pointed out that the deceased was cruelly and mercilessly beaten by three men armed

(1) (1907) I. L. R., 29 All., 282.

(3) (1908) I. L. R., 36 Calc., 659.

(2) (1896) I. L. R., 19 Mad., 462.

(4) Weekly Notes, 1887, p. 236.

(5) (1912) 9 A. L. J., 180.

with *lathis*, who continued to use their weapons upon him after he had fallen to the ground. The *lathi* is a lethal weapon, as has been held more than once by this Court. The circumstances of the case leave no doubt in our minds that the assailants either intended to cause death or had every reason to know that the probable result of their joint act would be death. It is pleaded that there had been no premeditation and that the attack was made suddenly, directly the assailants caught sight of the deceased. Whether there was or was not premeditation is perhaps not clear, but there was concerted action and the attack was so ferocious as to lead almost to the inference that it had been premeditated.

In any event, we cannot hold that the assailants could not have contemplated or did not contemplate that the result of their action would be death or such bodily injury as is likely to cause death.

The death was not necessarily the result of any single blow. It was the result of the many blows inflicted on the head.

In this respect we would call attention to the decision in *King-Emperor v. Subbappa Chunnappa* (1). In the present case, as in the reported case, the attack was a single indivisible thing.

The facts of the present case are very similar to those of *Emperor v. Kanhai* (2). The using of lethal weapons in the manner in which they were used in the present case leaves no room for doubting that the assailants intended to cause such bodily injury as is likely to cause death. They must, in the present case, have known that death would probably result, even if they had not fully intended to cause death, though indications of such an intention are not by any means absent. The assault was an act of revenge and carried out brutally and savagely. We have no hesitation in holding that Ram Newaz is guilty of murder. In regard to sentence, the Crown does not press for the extreme penalty. The accused is a youth who was, no doubt, led into the matter by his two elder brothers, and we agree that the ends of justice will be met by imposing the lesser of the two sentences allowed by the law. We allow the appeal and set aside the acquittal of Ram Newaz. We convict him of murder under section 302 of the Indian Penal Code and sentence him to transportation for life.

*Appeal allowed.*

(1) (1912) 15 Bom. L. R., 308.

(2) (1913) I. L. R., 35 All., 829.