

would have been if Ram Charan had concurred in making it. The issue remitted by the learned Judge raised a question which might have been litigated upon an objection taken by Ram Charan himself, but which this Court refused to allow to be taken by a person in the position of Ram Charan's widow. We must hold, therefore, that the principle of the decision in *Ajudhia Prasad v. Jasoda* (1) governs the present case, and, as we are not prepared to dissent from it or re-consider it we must allow this appeal. We do so accordingly. We set aside the decree of the lower appellate court and restore that of the court of first instance, with costs throughout.

*Appeal allowed.*

## APPELLATE CRIMINAL.

*Before Justice Sir Pramada Charan Banerji.*

EMPEROR v. CHANDAN SINGH AND OTHERS\*.

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

Three persons attacked a fourth with *lathis* and death ensued through a fracture of the skull of the person so attacked. There was, however, no evidence to show that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased.

*Held* that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder. *Emperor v. Bholu Singh* (2) followed.

THE facts of this case were as follows :—

One Girdhar Singh was attacked when seated at his *chaupal* by three persons, who had enmity with him, armed with *lathis*. These persons knocked down Girdhar Singh, as he was attempting to retreat into his house, which adjoined the *chaupal*, and inflicted various injuries. The skull was extensively fractured and Girdhar Singh died in consequence the same evening. It was not, however, clear from the evidence which of the assailants was actually responsible for the fracture of the skull. The

\* Criminal Appeal No. 668 of 1917, from an order of W. F. Kirton, Sessions Judge of Aligarh, dated the 23rd of July, 1917.

(1) *Weekly Notes*, 1897, p. 279.

(2) (1907) I. C. R., 39 All., 262.

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three assailants were convicted of the offence of culpable homicide not amounting to murder under section 304 of the Indian Penal Code, and sentenced each to ten years' rigorous imprisonment. They appealed to the High Court.

The Government Pleader (Babu *Labit Mohan Banerji*), for the Crown.

BANERJI, J.—The appellants have been convicted of having caused the death of one Girdhar Singh and each of them has been sentenced, under section 304 of the Indian Penal Code, to ten years' rigorous imprisonment.

It has been fully proved that there are various factions among the residents of the village of which the deceased was and the appellants are residents and that considerable enmity existed between the deceased and the appellants. A few days before the occurrence, the deceased had given evidence against the appellants, and on the day on which he was killed he was to have given evidence against them in the Tahsildar's court in favour of one of his partizans. That morning, while he was seated at his *chaupal*, the three accused came there, armed with *lathis*, and challenged the deceased Girdhar Singh. There was an exchange of abuse and each side threatened to strike the other. Some of the persons who were there intervened and one of them asked Girdhar Singh to go into his house and pushed him towards the door. When he had moved a few paces, the three accused attacked him with their *lathis*, knocked him down and inflicted injuries. The medical evidence shows that his skull was extensively fractured and this resulted in his death, which took place the same evening. The above facts are fully proved by the witnesses for the prosecution who have been believed by the learned Sessions Judge and whom there is no reason to disbelieve. Their evidence, however, does not show which of the three accused struck the fatal blow which caused the fracture of the skull. With the exception of Hub Lal, who only says that Tota accused struck the deceased on the head, the others are unable to say anything on the point. Hub Lal is the brother of the deceased and it is probable that he was exaggerating. The evidence leaves it in doubt which of the assailants of Girdhar Singh struck the blow which proved fatal. Under these circumstances the appellant

cannot be convicted under section 304. The common intention of the accused was not to cause death or such injury as was likely to cause death but only to cause grievous hurt. This case is similar to that of *Emperor v. Bhola Singh* (1), in which it was held, under circumstances which were exactly the same as those of the present case, that the accused were guilty under section 325 and not under section 304. I therefore alter the conviction to one under section 325 of the Indian Penal Code and reduce the sentence, in the case of each appellant, to one of five year's rigorous imprisonment.

*Conviction altered.*

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## REVISIONAL CRIMINAL.

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*Before Mr. Justice Piggott and Mr. Justice Walsh.*

EMPEROR v. MANIK CHAND.\*

*Act (Local) No. I of 1904 (General Clauses Act), section 24—Effect of General Clauses Act as regards rules framed under the former Municipalities Act of 1900—Municipal Account Code, rule 40—Octroi duty.*

A consignment of cloth addressed to one *M* reached one of the octroi barriers of Bareilly on the 19th of February, 1917. The officer in charge demanded a larger sum than *M* considered properly leviable. The matter was referred to the Octroi Superintendent who, as he had the right to do, assessed the duty at Re. 1-0-9. Under rule 40 of the Municipal Account Code framed under Act No. I of 1900, a person in the position of *M* could appeal against the decision within sixty days, but he could only exercise the right by first paying under protest the duty demanded. *M*, however, appealed against the decision without making the payment. On the expiry of sixty days a prosecution was instituted against *M* under Act No. II of 1916, and he was fined. He applied in revision to the High Court:—*Held* that the conviction was legal; the jurisdiction of the court was saved by section 24 of the Local General Clauses Act, and the fact that the prosecution had been instituted under the Municipal Account Code framed under the repealed Municipalities Act (No. I of 1900) did not affect the question. *Held* also that the mandatory direction in rule 40 of the Municipal Account Code lays down, by inference, a period of 53 days, on the expiry of which without payment as required the offence is complete and a prosecution may be started.

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\* Criminal Revision No. 689 of 1917, from an order of Muhammad Muti-ullah Khan, Magistrate, First Class, of Bareilly, dated the 31st of May, 1917.

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