

APPELLATE CRIMINAL.

1920
January 29.

Before Mr. Justice Diggott and Mr. Justice Walsh.

EMPEROR v. RAMA SINGH*.

Act No. XLV of 1860 (Indian Penal Code), sections 304, 325—Culpable homicide—Grievous hurt—Injury caused by a lathi resulting in death from gangrene.

R struck G three blows with a *lathi*. One blow fractured the bones of the left forearm, another fractured a bone in the right hand, while the third fractured both bones of the left leg. In the case of the third injury gangrene supervened and G died in consequence.

Held that R was guilty of either culpable homicide not amounting to murder under section 304 of the Indian Penal Code, or causing of grievous hurt under section 325 of the Code

THE facts of the case were as follows:—

The appellant Rama Singh struck Ghura Singh three blows with a *lathi*. One blow fractured the bones of Ghura Singh's left forearm, another fractured a bone in his right hand, while third fractured both bones of the left leg. In the case of the third injury gangrene supervened and Ghura Singh died. Rama Singh was charged under section 302, Indian Penal Code, and the learned Sessions Judge in convicting him of the charge remarked in his judgment—

"It is perfectly clear that Ghura Singh was assaulted by Rama Singh with a *lathi*, that he received certain injuries causing gangrene which resulted in his death. There can, therefore, be no question about the responsibility of Rama Singh about Ghura Singh's death, but the question is whether he is guilty of murder. Explanation (1) to section 299, Indian Penal Code, says that a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that another shall be deemed to have caused his death. In this case the evidence of the Civil Surgeon is that the deceased was 65 years of age and his body was emaciated, which means probably that Ghura Singh was a feeble old man. Section 300, Indian Penal Code, lays down that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death or it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. Rama Singh must in the eyes of law be supposed to have had the knowledge that the breaking of an old man's bones would cause gangrene which proves fatal to life."

The learned Judge thereupon convicted Rama Singh under section 302 and sentenced him to transportation for life.

* Criminal Appeal No. 1148 of 1919, from an order of G. C. Badhwar, Sessions Judge of Ghazipur, dated the 17th of September, 1919.

Rama Singh appealed.

Babu *Saila Nath Mukerji*, (Mr. *A. S. Osborne*, with him) for the appellant, contended that the conviction under section 302 was bad in law. A *lathi* blow was such an ordinary thing among the class of people to which the appellant belonged that Rama Singh could never be presumed to have known that the blow would cause gangrene and ultimate death. The appellant, if he had the least intention of causing death, would have aimed at the head of the deceased and not his foot. "Disorder, disease or bodily infirmity" does not mean mere old age as in the present case. It is not in every case that a broken bone of the foot causes the death of an old man. The fact that the deceased was an old man would affect the case so far that the appellant might perhaps get a severer sentence under section 325 than he would have got in another case. The quarrel which brought about the *marpit* was of a most trivial nature and it cannot be held that Rama Singh intended to kill the man. The words "disorder, disease or infirmity" imply the existence of something so obvious that the accused should have known that death would be the result of his act in conjunction with the disorder, disease or infirmity. For instance if the accused had hit the deceased on the head with a light cane and owing to the skull having become very brittle by reason of old age the blow had caused the death of the old man, that might have been covered by explanation (1) to section 299; *Laik Singh v. Emperor* (1).

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown:—

There could be no doubt that the accused aimed his first blow at the head of the deceased which he stopped with his hand and the blow broke a bone. The repeated *lathi* blows show that more than simple hurt was intended. But, death having actually intervened, the appellant in any case is liable for culpable homicide not amounting to murder.

Babu *Saila Nath Mukerji*, was heard in reply.

PIGGOTT and WALSH, JJ.:—The facts established by the evidence in this case are as follows:—The appellant, Rama Singh, had a dispute with his neighbour and caste-fellow, Ghura

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Singh, about the boundaries of their fields. The dispute led to a scuffle and finally Rama Singh, having armed himself with a *lathi*, assaulted Ghura Singh. It would seem that he struck him three blows, one of which fractured the bones of the left forearm, another fractured a bone in the right hand while the third fractured both bones of the left leg. This last must have been the third blow struck, because the evidence is that Ghura Singh fell down after receiving the blows struck by the appellant and was not again hit after he had fallen to the ground. Ghura Singh was carried to hospital. He made a report at the police station and his dying declaration was recorded twice, once by a Magistrate at Bamsdih while he was under treatment in the local dispensary, and afterwards by a Magistrate at Ballia. The first of these declarations has rightly been regarded by the learned Sessions Judge as the most important piece of evidence in the case. There are, however, also statements by eye-witnesses of the assault, which fully establish the facts above set forth. The question which has been really argued before us is the nature of the offence thereby committed by Rama Singh. The learned Sessions Judge says that he must, by some presumption of law, be considered to have known that in inflicting these injuries he was likely thereby to cause death. That finding, as it stands, might suffice for the definition of culpable homicide in section 299 of the Indian Penal Code, but it is not quite sufficient for the more stringent definition of murder contained in the fourth clause of section 300. As a matter of fact, Ghura Singh died because gangrene supervened in consequence of the injury to the left leg. We have no doubt that his death was caused by Rama Singh. We also agree with the learned Sessions Judge in holding that there is no warrant in the evidence for a finding that Rama Singh, when he struck Ghura Singh, intended to cause his death, or intended to cause such bodily injury as he knew to be likely to cause death. The most serious points in the case against the appellant are the fact that after the first dispute he went away to his house to fetch the *lathi* with which he committed the assault, and, secondly, the fact that Ghura Singh was an old man, apparently of feeble constitution. On the other hand, the evidence does show that Ghura Singh carried a bamboo *lathi* of some sort and that he defended himself

with it. As a matter of fact, although none of the witnesses says in so many words that Ghura Singh also struck Rama Singh, the learned Sessions Judge has noted in his judgment that there was evidence of some slight injuries to Rama Singh's person, presumably suffered in the course of the encounter. On the whole we think that the learned Sessions Judge has gone a little too far in bringing the case within the definition of murder. It is certainly one of those cases in which a jury in England would unhesitatingly convict of manslaughter. We think it a very arguable point whether the conviction should be recorded as one of culpable homicide not amounting to murder under section 304, Indian Penal Code, or simply as one of causing grievous hurt under section 325 of the same Code. The law allows us to record a conviction in the alternative, and we think it well to do so, as we desire to mark our sense of the gravity of the case by passing the maximum sentence provided for the lesser of the two offences above referred to. Our order, therefore, is that we set aside the conviction under section 302, Indian Penal Code, and the sentence of transportation for life passed by the Sessions Court. We record a conviction in the alternative under section 304 or section 325 of the Indian Penal Code, and we sentence Rama Singh to rigorous imprisonment for seven years, the sentence to take effect from the date of his conviction in the Sessions Court.

Conviction altered.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

AZMAT ALI (PLAINTIFF) v. QURBAN AHMAD (DEFENDANT) *

Suit for malicious prosecution—Cause of action—Criminal proceedings against the plaintiff dismissed upon technical grounds.

To support a suit for damages for malicious prosecution it is not necessary that the criminal proceedings instituted against the plaintiff should have been heard out to the end; it is sufficient if criminal proceedings have been initiated, though they may have fallen through for technical reasons unconnected with the merits. *Nalappa Goundan v. Kailappa Goundan* (1) not followed. *Bishan Persad Na'am Singh v. Phulman Singh* (2) and *Ahmedbhai v. Framji Edulji* (3) referred to.

* Appeal No. 145 of 1917, under section 10 of the Letters Patent.

(1) (1905) I.L.R., 24 Mad., 59. (2) (1914) 19 C. W. N., 935.

(3) (1909) I. L. R., 28 Bom., 226.

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