

REVISIONAL CRIMINAL.

1922
January, 18.

Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.

EMPEROR v. SHEODARSHAN SINGH.*

Criminal Procedure Code, section 439, clause (4)—Revision—Acquittal—High Court not competent to convert an acquittal into a conviction except through the medium of an appeal by the Local Government.

An accused person was charged with both murder and culpable homicide not amounting to murder. He was acquitted on the former charge and convicted on the latter. On a perusal of the sessions statement notice was sent to the accused to show cause why he should not be convicted of murder; and punished accordingly.

Held, on return of the notice, that the High Court had no power, except through the medium of an appeal on behalf of the Local Government, to convert the acquittal into a conviction.

The facts of this case are fully stated in the judgment of the Court.

The Assistant Government Advocate (Mr. R. Malcomson) for the Crown.

Mr. *Hamid Hasan*, for the opposite party.

GOKUL PRASAD and STUART, JJ. :—Sheodarshan Singh was committed to the court of the Sessions Judge of Banda on a charge under section 302 of the Indian Penal Code. The Sessions Judge found that on the facts an offence under section 302 of the Indian Penal Code was not made out but that an offence under section 304 of the Indian Penal Code was made out. He, accordingly, found Sheodarshan Singh guilty under that section and sentenced him to seven years' rigorous imprisonment. The judgment of the Sessions Judge being brought to the notice of PIGGOTT, J., on perusal of the sessions statement, he directed that notice should go to Sheodarshan Singh to show cause why he should not be convicted of the offence of murder or why the sentence passed upon him should not be enhanced. It is to be noted that Sheodarshan Singh did not appeal against his conviction. He has, however, been represented before us in the matter of enhancement by a competent counsel who has taken us through the whole of the evidence in the case. On the evidence, it is perfectly clear that on the day in question a man called

* Criminal Revision No. 688 of 1921, from an order of Shams ud-din Khan, Additional Sessions Judge of Cawnpore at Banda.

Sukhnandan was sitting under a tree in Ainchwara, in the Banda district, and that Sheodarshan Singh was sitting close by him. There is nothing to show how a quarrel arose between the two, but at about 2 p.m. in the afternoon, Sheodarshan and two other men set on Sukhnandan with *lathis*. Sukhnandan got up and ran away endeavouring to escape. They followed him, brought him down, and continued to rain *lathi* blows on him. Sukhnandan succumbed to his injuries. The injuries inflicted upon him were about as severe injuries as could be inflicted upon a human being with *lathis*. His skull was fractured. There were no less than 19 injuries upon the head and there were also other injuries upon the body. The man was battered to death in a most deliberate and merciless way. Apart from other evidence, three persons, Parshadi, Musammât Chunki and Khushali, who assert that they were eye witnesses of the affair and whom we see no reason to disbelieve, have deposed that Sheodarshan took part in the brutal assault upon the deceased. These witnesses were believed by the Sessions Judge and the assessors. Now, upon these facts, Sheodarshan Singh was undoubtedly guilty of murder. The reasons given by the Sessions Judge for finding that the offence committed was less than a murder show, we regret to say, a complete want of acquaintance with the law on the subject. He appears to think that if there is no premeditation and if an attack is made with *lathis* such as are usually carried by villagers, it is impossible for the offence to be murder. We suggest to the learned Judge that he should carefully study the provisions of sections 299 and 300 of the Indian Penal Code. He will then find that when death is caused by an act which has been done with the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the offence is murder. We cannot, however, change the conviction into a conviction of murder. Sheodarshan Singh was acquitted by the Sessions Judge of the offence of murder and we cannot, in revision, convert a finding of acquittal into one of conviction. The only method by which it would be possible to obtain a conviction of murder would be by an appeal by the Government against the acquittal. But even if the

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Sessions Judge had been right in his views and the case had been a case of culpable homicide, the sentence is inadequate. Taking it as a case of culpable homicide, it is about as bad a case of culpable homicide as can be conceived and was a case in which the maximum sentence allowed by the law should have been inflicted. We inflict that sentence now by enhancing the sentence of seven years' rigorous imprisonment into one of transportation for life.

Sentence enhanced.

APPELLATE CIVIL.

1922
January, 20.

Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

MUHAMMAD AHMAD (PLAINTIFF) v. ZAEUR AHMAD AND OTHERS
(DEPENDANTS).*

Civil Procedure Code (1908), section 11—Res judicata—Application of the doctrine of res judicata to persons who were co-defendants in the former suit.

A decision as between co-defendants cannot be *res judicata* under the provisions of section 11 of the Code of Civil Procedure unless it was necessary to decide an issue between them in order to grant relief to the plaintiff.

Mohammad Elashmat Ali v. Kaniz Fatima (1) and Somasundara Mudali v. Kulandaivelu Pillai (2) referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgment of a single Judge of the Court.

The facts of the case are fully stated in the judgment of the Court.

Babu Piari Lal Banerji, for the appellant.

Mr. G. W. Dillon, Dr. S. M. Sulaiman, Mr. Humidullah, Mr. S. A. Haider and Maulvi Iqbal Ahmad, for the respondents.

MEARS, C. J., and BANERJI, J. :—The question which arises in this appeal is whether the suit of the plaintiff is barred by the rule of *res judicata*. For the purpose of determining this question, it is necessary to state a few facts. One Karim-ullah died many years ago leaving a widow, Musammam Sabi-un-nissa a son, Nizam-ud-din, and two daughters, Khurshed Jahan and Kaniz Fatma. Disputes arose between the heirs of Karim-ullah,

* Appeal No. 12 of 1920, under section 10 of the Letters Patent.

(1) (1915) 18 A. L. J., 110. (2) (1904) I. L. R., 28 Mad., 457.