APPELLATE CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice G. H. Thomas

1934 December, 20

RAJA RAM (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT)*

Indian Penal Code (Act XLV of 1860), sections 299 and 300—Culpable homicide and murder, distinction between—Case falling under section 299 and not covered by any of the clauses or exceptions in section 300—Criminal Procedure Code (Act V of 1898), section 439(3)—Revision—Enhancement of sentence—Power of High Court—Case tried by Assistant Sessions Judge—High Court's power to inflict greater punishment than could have been inflicted by trial Court.

An offence may amount to culpable homicide but not murder even though none of the exceptions in section 300, Indian Penal Code are applicable to the case. Where, therefore, the accused strangles the deceased with probably the intention of causing such bodily injury as is likely to cause death, but not with the intention of causing such bodily injury as he knew to be likely to cause death, or as is sufficient in the ordinary course of nature to cause death neither clause (2) nor clause (3) of section 300, Indian Penal Code, apply and the offence is culpable homicide not amounting to murder, even though none of the exceptions in section 300 apply to the case.

Except in the specific case provided for in clause (3) of section 439, Criminal Procedure Code, the High Court's powers of enhancement of sentence in revision are not in any way restricted. In a case not tried by a Magistrate but by an Assistant Sessions Judge, the High Court is competent to inflict, in revision, any sentence which, in the circumstances of the case, might appear to be proper, irrespective of the limits of the powers exercisable by the trial court. *King-Emperor* v. *Ratan* (1), *Emperor* v. *Kamal* (2), and *Crown* v. *Jagat Singh* (3), referred to.

The appellant in person under police escort.

The Government Advocate (Mr. *H. S. Gupta*), for the Crown.

*Criminal Appeal No. 326 of 1934, against the order of Babu Shiva Charan, Assistant Sessions Judge of Fyzabad, dated the 4th of September, 1934.

(1) (1932) I.L.R., 7 Luck., 634. (2) (1915) 16 Cri.L.J., 712.
(3) (1919) I.L.R., 1 Lah., 453.

SRIVASTAVA and THOMAS, JJ.:—The accused Raja Ram was committed for trial under section 304 of the Indian Penal Code and tried in the court of the Assistant Sessions Judge of Fyzabad who convicted him under that section, and sentenced him to five years' rigorous imprisonment. He has appealed against his conviction and sentence. An application for revision has also been made on behalf of the Crown under section 439 of the Code of Criminal Procedure, for enhancement of the sentence.

The case for the prosecution is that Raja Ram had made some indecent overtures to Musammat Maina, the wife of the deceased, Bhagwati Din. Musammat Maina, having resented these overtures, told her husband about it and also her mother-in-law, Musammat Jagwanti. When this matter became known to the biradari, the accused as well as Musammat Maina were outcasted. Subsequently, the biradari people being satisfied that Musammat Maina was innocent, she was readmitted into the biradari, but the accused remained an outcaste. As a result of this, there existed enmity between the accused and Bhagwati Din, deceased.

On the night of the 16th of May, 1934, Bhagwati Din and his mother, Musammat Jagwanti, were having some talk with one of their neighbours, Musammat Raj Dei, when the accused, Raja Ram, happened to pass that way. He addressed Bhagwati Din in a defiant tone that he should make way for him. Bhagwati Din made no reply and the accused passed on; but after going a few steps, came back and again complained to Bhagwati Din for not making way for him in spite of repeatedly being asked to do so. Bhagwati Din then said in reply that the place was wide enough even for a bullock cart to pass, and protested against Raja Ram addressing him in that harsh tone. Thereupon, Raja Ram caught hold of the neck of Bhagwati Din and began to strangle him. He also threw him on the ground and sat over

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him and smote the chest and stomach of the deceased with his knee and elbow. Musammats Jagwanti and Raj Dei then raised a cry which brought Sripal, brother of Bhagwati Din, to the scene. Sripal asked Raja Ram to leave Bhagwati Din, but when Raja Ram paid no heed to it, Sripal gave him two lathi blows. On receiving the blows, Raja Ram left Bhagwati Din. Bhagwati had become unconscious and was removed by Sripal over his shoulders to his house where he died in the small hours of the morning.

The prosecution has examined 12 persons; of these P. W. 6 Musammat Jagwanti, and P. W. 7 Musammat Raj Dei witnessed the whole quarrel from beginning to end, and Sripal, P. W. 1, witnessed it since the time he arrived on the scene. Four other witnesses P. W. 8 Suraj Bali, P. W. 9 Ram Narain, P. W. 10 Ram Asray and P. W. 11 Ram Hait, reached the place on hearing the hue and cry and saw the accused sitting on the chest of the deceased and strangling him. We have carefully examined the evidence of these witnesses. The story told by them is simple and straightforward. It is also in substantial agreement with the version given by Sripal in his first report made at the police station on the morning of the 17th of May, 1934. Nothing has been brought out in the cross-examination of these witnesses to discredit them. All the witnesses are of the same caste to which the accused and the deceased belonged. There is nothing on the record to show that they had any motive for falsely implicating the accused. The accused himself, in his statement in the court of the Committing Magistrate, as well as in the court of the learned Assistant Sessions Judge, admitted that he passed the place where Bhagwati Din was sitting on the night in question, and asked him to make room for him which led to an altercation between them. He would, however, have us believe that Bhagwati Din, and his brother, Sripal, were the aggressors; that he did not cause

any injury to Bhagwati Din and that Sripal had hit him with lathi blows which made him unconscious. When questioned by us, the accused has repeated the same story and is unable to offer any explanation as to how Bhagwati Din met his death. Thus, having given our careful consideration to the prosecution evidence, we have no hesitation in agreeing with the learned Assistant Sessions Judge, that it is true and worthy of credit. In fact, the case against the accused is so clear that all the four assessors also were unanimously of opinion that the accused was guilty of the offence with which he was charged.

The next question which arises on the application for revision made on behalf of the Crown is, whether on the facts proved, the offence committed by the accused fell under section 302, or under section 304 of the Indian Penal Code. In case the offence was one under section 302, the only course possible would be to order a retrial as the accused was not charged under section 302 of the Indian Penal Code. The evidence shows that the accused was unarmed. The accused was present before us in court, and in our opinion, he is a man of a very ordinary constitution. The differences which existed between Raja Ram and Bhagwati Din, which are set up by the prosecution as the motive for the crime, were also not of such a serious character that they could justify the inference that Raja Ram had any direct intention to kill Bhagwati Din. The medical evidence shows that Bhagwati Din was of a fairly muscular build. The post mortem examination does not reveal any definite external signs of any injury nor any external wound. Unfortunately, the corpse was in an advanced state of decomposition at the time of post mortem examination and so the Civil Surgeon could not ascertain the exact cause of death. We have, therefore, as regards the nature of the injuries, to depend merely upon the evidence of the laymen who witnessed the occurrence.

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According to that evidence, as already stated, the accused sat on the chest of the deceased and strangled him. Taking all the evidence into consideration, we think that the case is only one of culpable homicide and not of murder. The case, in our opinion, is one in which the death was caused by doing an act "with the intention of causing such bodily injury as is likely to cause death" within the meaning of section 299 of the Indian Penal Code, but does not fall within any of the clauses of section 300 of the Indian Penal Code. The distinction between the two cases though fine is appreciable.

In the case of *King-Emperor* v. *Ratan* (1), decided by a Bench of this Court to which one of us was a party, the distinction is discussed at length.

An offence may amount to culpable homicide but not murder even though none of the exceptions in section 300 are applicable to the case. The learned Government Advocate sought to bring the case under clause (2) or clause (3) of section 300. Although the accused, when he strangled the deceased, may be imputed the intention of causing such bodily injury as is likely to cause death, yet it is difficult to say that he acted with the intention of causing such bodily injury as he knew to be likely to cause death, or as is sufficient in the ordinary course of nature to cause death. We do not think there was an intention to cause death, nor do we think that the bodily injury was sufficient in the ordinary course of nature to cause death. The clauses of section 300 in question imply a direct mental intention and a special degree of criminality which is not made out in the present case. We think, therefore, that sufficient grounds do not exist for our ordering a retrial on a charge under section 302 of the Indian Penal Code.

The next question is as regards the powers of this Court about enhancing the sentence. The case, as mentioned before, was tried by an Assistant Sessions Judge.

(1) (1932) I.L.R., 7 Luck., 634.

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and the maximum sentence which he could pass under the law was rigorous imprisonment for a period of seven years. The question arises whether this Court, in the exercise of its revisional powers under section 439 of the Code of Criminal Procedure, can inflict any greater punishment than could have been inflicted by the trial Judge. There is no decided case of our Court on this point. The only limitation regarding enhancement of sentence contained in section 439 of the Code of Criminal Procedure is to be found in clause 3 of that section which provides that where the sentence dealt with under the section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class. The present case is not one tried by a Magistrate, and this clause clearly has no application. We are of opinion that, except in the specific case provided for in clause 3, this Court's powers of enhancement of sentence under section 439 of the Code of Criminal Procedure are not in any way restricted, and we are therefore competent to inflict any sentence which, in the circumstances of the case, might appear to be proper, irrespective of the limits of the powers exercisable by the Court of trial. In *Emperor* v. *Kamal* (1) two Judges of the Sind Judicial Commissioner's Court held that the power of enhancement of sentence conferred upon the High Court by section 439, Criminal Procedure Code, is limited only by clause (3) of that section, which clause does not regard the difference in the powers of the trying Magistrate under section 32 of the same Code, but lays down the general rule that in cases of sentences passed by Magistrates not empowered under section 34, the limit of enhancement shall be the sentence that may be

(1) (1915) 16 Cri.L.J., 712.

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inflicted by a Presidency or a first class Magistrate. This case was followed by a single Judge of the Lahore High Court in *Crown* v. *Jagat Singh and others* (1). These cases support the view taken by us as regards our powers in the matter of enhancing the sentence.

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There can be no doubt that the injuries inflicted by Raja Ram were the cause of the death of Bhagwati Din which ensued within a few hours of his receiving the injuries. It is also clear that the injuries were not accidental. We think that a sentence of five years' rigorous imprisonment was altogether inadequate. We would, therefore, enhance the sentence to a period of ten years' rigorous imprisonment.

The result, therefore, is that we dismiss the appeal of Raja Ram, and allow the application for revision, and upholding the conviction under section 304 of the Indian Penal Code, enhance the sentence to one of ten years' rigorous imprisonment.

Appeal dismissed.

ORIGINAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

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DEPUTY COMMISSIONER, KHERI, AS MANAGER, COURT OF WARDS MAHEWA ESTATE (PLAINTIFF) *v.* PANDIT DAYA CHAND CHAUBEY AND OTHERS (DEFENDANTS)*

United Provinces Court of Wards Act (IV of 1912), sections 8, 11 and 55—Declaration under section 8—Formalities of section 8 not complied with—Declaration, whether can be questioned by Civil Court—Claim for damages—Suit for personal claim, whether can be maintained by a ward—Sections 11 and 55, Court of Wards Act, scope of.

If a declaration made by the Local Government under section 8 is wholly without jurisdiction and outside the scope of the section, it might be treated as a nullity, but if the Local Government has committed any irregularity or even illegality in the

*Original Suit No. 1 of 1934.

(1) (1919) I.L.R., 1 Lah., 453.