APPELLATE CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice E. M. Nanavutty

KING-EMPEROR (COMPLAINANT-APPELLANT) *v.* SAT NARAIN AND OTHERS (ACCUSED-RESPONDENTS)* 1935 *February*, 12

Indian Penal Code (Act XLV of 1860), sections 299, 302 and 304—Assault—Accused inflicting number of injuries, most of them after the deceased had fallen down unconscious—Beating with the intention of causing such bodily injuries as were likely to cause death or with knowledge that they were likely to cause death—Offence, whether of culpable homicide or wilful murder.

Where seven accused made a deliberate attack upon one man and ultimately caused his death by fracturing his ribs and rupturing his spleen and inflicting three injuries on his head which left him unconscious and which according to the opinion of the medical officer might have also resulted in his death, *held*, that even if it be assumed that the accused had no intention of committing wilful murder of the deceased, still the fact that they inflicted 24 injuries on the deceased, about 20 of them being inflicted after the deceased had fallen down and was unconscious, shows that they certainly beat him with the intention of causing such bodily injuries as were likely to cause his death, or with the knowledge that they were likely by such acts to cause his death, and therefore, all the accused were guilty of an offence of culpable homicide punishable under section 304 of the Indian Penal Code, if not of the offence of wilful murder punishable under section 302 of the Indian Penal Code. *Emperor* v. *Dainullya Molla* (1), and *Indar Singh* v. *The Crown* (2), referred to. *Karan Singh* v. *King-Emperor* (3), *King-Emperor* v. *Ratan* (4), and *Raghunandan* v. *King-Emperor* (5), distinguished.

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

Mr. *Ali Husain*, for the accused.

*Criminal Appeal No. 401 of 1934, against the order of Mr. K. N. Wanchoo, I.C.S., Sessions Judge of Rae Bareli, dated the 21st of September, 1934.

(1) (1930) 34 C.W.N., 1127. (2) (1928) I.L.R., 10 Lah., 477.
(3) (1924) 11 O.L.J., 563. (4) (1932) I.L.R., 7 Luck., 634.
(5) (1934) I.L.R., 10 Luck., 320.

1935

KING-EMPEROR v. SAT NARAIN

SRIVASTAVA and NANAVUTTY, JJ.:—This is an appeal filed by the Local Government under section 417 of the Code of Criminal Procedure against the judgment of the learned Sessions Judge of Rae Bareli, dated the 21st of December, 1934, acquitting the seven accused Sat Narain, Sri Datt, Sawamiji Bhagoti, Indrapal Singh, Gaya Bakhsh Singh and Rangai Singh *alias* Ran Bahadur Singh, of an offence under section 302 of the Indian Penal Code, read with section 149 of the Indian Penal Code, and in lieu thereof convicting them of an offence under section 325 of the Indian Penal Code, read with section 149 of the Indian Penal Code, and sentencing each of them to two years' rigorous imprisonment.

We have heard the learned Government Advocate on behalf of the Crown as well as the learned counsel for the accused, Mr. Ali Husain, who does not challenge the truth of the prosecution story; and, so far as this appeal is concerned, the case for the prosecution, which is substantially accepted as correct by the learned counsel for the accused, is as follows:

There was illicit connexion between the wife of the deceased Chandra Bhukan and the principal accused Sat Narain Brahman. When Chandra Bhukan became aware of this illicit intimacy between his wife and Sat Narain he prohibited the latter from coming to his house. Some weeks before the commission of the actual murder of Chandra Bhukan the latter gave two blows to Sat Narain in village Sitkaiya when Sat Narain tried to sit near Chandra Bhukan's wife. This insult enraged Sat Narain, and it is alleged that with the help of the other six accused Sat Narain made a murderous assault on Chandra Bhukan on the afternoon of the 8th of May, 1934, when Chandra Bhukan was going to Salon bazar in the company of Mahabir. All seven accused mercilessly assaulted the deceased. Sripal, the younger brother of Chandra Bhukan, also went to the

bazar a short while after his brother, and he heard the cries of Mahabir that Chandra Bhukan was being beaten by the seven accused. Sripal shouted to the accused to let his brother go. In the meantime Raghubar Singh, Dujai and Sital also turned up at the scene of occurrence and then all seven accused ran away. The injured Chandra Bhukan was then taken to the Thana and the report, exhibit 1, was made a little after 6 p.m. Sat Narain and Sri Dat had also reached police station Salon and they too made a report, exhibit 4. The Sub-Inspector in charge of police station Salon arrested Sat Narain and Sridat immediately after the report made by Sripal, the younger brother of the deceased. A police investigation followed, and ultimately all seven accused were committed to the Court of Session on charges of riot and murder under section 147 and 302 read with section 149 of the Indian Penal Code.

The *panchayatnama,* or inquest report, prepared by the investigating police officer shows that the police officer found the following injuries on the person of the deceased Chandra Bhukan:

1. One injury above the forehead in the middle of the head about one and a quarter inch in length and one and a half inch in depth from which blood was oozing.

2. Another injury caused by a lathi blow on the crown of the head, half an inch in depth and one and a half inch in length, and

3. A lathi injury above the left ear, one inch in length and half an inch in depth. The head was slightly swollen.

Fifteen to sixteen lathi marks were found on the stomach and the left ribs and there was a bluish mark on the skin. The stomach was swollen. On the outer portion of the left thigh there were blue marks caused by lathi blows. On the left buttock there was one blue mark caused by a lathi blow, and on the left shoulder

1935

KING-EMPEROR v. SAT NARAIN

Srivastava and Nanavutty, JJ.

there was one blue mark. The face and head were besmeared with blood. The stomach was swollen near the navel. The eyes and mouth were open and blood was coming out of the left nostril.

It is clear from this description of the corpse prepared in the presence of the *panches* by the investigating police officer that there were no less than 24 external marks of injury on the deceased. At the time of the post mortem examination of the deceased, the officiating Civil Surgeon of Rae Bareli found the following injuries:

1. A contused wound $2'' \times \frac{1}{4}''$, deep down to the bone on the front of the head in the middle.

2. A contused wound $2'' \times \frac{1}{4}''$, deep down to the bone on the top of the head.

3. A contused wound $\frac{3}{4}'' \times 1/6''$, skin deep on the left side of the head.

4. A contusion $5'' \times 2''$ on the top of the right shoulder.

5. A contusion $3'' \times 6''$ on the left side of the lower part of the chest on the outer side.

6. A contusion $3'' \times 2''$ on the left buttock.

7. A contusion $6'' \times 2''$ on the outer side of the left thigh.

8. The 9th, 10th and 11th ribs on the left side were broken.

The spleen weighed seven ounces and was found ruptured at two places on the outer side, each rupture being one inch in length and an inch and a half apart. In the opinion of the officiating Civil Surgeon the cause of death was internal haemorrhage due to rupture of the spleen. The officiating Civil Surgeon was examined before the Committing Magistrate, and in his examination he stated that death could be caused by the cumulative effect of all the injuries including the haemorrhage due to rupture of the spleen, which by itself could also

cause death. He also stated that the deceased could have been rendered unconscious immediately after he received the injuries on his head and that concussion of the brain could be caused by the injuries on the head, and death could result from them. In cross-examination he further emphasized the fact that death was possible as a result of the other injuries alone apart from rupture of the spleen. He further stated that the deceased could have survived the injuries inflicted upon him if there had been no rupture of the spleen and no internal haemorrhage, and if he had received prompt and efficient medical aid. The officiating Civil Surgeon was also examined in the Court of Session, and there he deposed that the normal weight of the spleen as given in Dr. Modi's work on Medico-Legal Jurisprudence is five to seven ounces. In the work on Medical Jurisprudence by Lyons, the normal weight of spleens in males is given as ten ounces. He further deposed that it was just possible that the spleen of the deceased Chandra Bhukan was a little larger than normal before the injury to it, and in cross-examination he stated that *the spleen might possibly have been diseased and that enlargement of the spleen is a disease.* He also stated in re-examination that in the spleen of Chandra Bhukan he could make out no other disease except possible enlargement.

In Dr. Modi's text book on Medical Jurisprudence and Toxicology, 1932 Edition, page 85 we find the learned author laying down that at the time of post mortem examination the doctor performing the post mortem examination should note the size, colour and consistency of the spleen as well as the condition of its capsule, and that in the case of rupture of the spleen its size and position should be described as well as the weight and that the normal spleen measures $5'' \times 3'' \times 1''$. In the present case we note that the

1935

KING-EMPEROR v. SAT NARAIN

Srivastava and Nanavutty, JJ.

doctor who performed the post mortem examination did not note the size, colour and consistency of the spleen or the condition of its capsule. At page 87 of his work, Dr. Modi gives a table showing the weight of the chief viscera of healthy Indians of the United Provinces of Agra and Oudh, varying from ten to seventy years of age, who died from violence, and he gives the average weight of the spleen in an Indian male as 6.03 oz., the minimum being 2.5 oz. and the maximum being 11 oz.

In the present case the weight of the spleen of the deceased was seven ounces, and this can hardly be deemed to be an enlarged spleen. In fact, in answer to a question put by the Sessions Judge, Dr. Mukerji has deposed that the normal in the case of Chandra Bhukan would be nearer the outer limit than the inner limit, meaning that it would be nearer to the maximum weight of 11 ounces than to the minimum weight of 2·5 ounces. We are, therefore, of opinion that the spleen of the deceased was, so far as we can judge from the evidence on the record a perfectly normal spleen. We also note that at the time of the post mortem examination the medical officer had not mentioned that the spleen was in any way unhealthy or that it was enlarged. He merely noted that it weighed 7 ounces and was ruptured at two places. We are, therefore, clearly of opinion that the learned Sessions Judge was wrong in giving such undue importance to this question of whether the spleen of the deceased was a healthy one or not. The finding of the learned Sessions Judge that the spleen of the deceased Chandra Bhukan was diseased is not supported by the medical evidence or by any other evidence on the record, and the question whether the accused persons knew or did not know whether the deceased Chandra Bhukan had a diseased spleen does not arise.

1935

KING-EMPEROR v. SAT NARAIN

Srivastava and Nanavutty, JJ.

The next question for determination is whether the offence of the accused comes within the purview of section 299 of the Indian Penal Code or falls within section 325 of the Indian Penal Code. Section 299 of the Indian Penal Code runs as follows:

"Whoever causes death by committing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death commits culpable homicide."

Explanation (2) to section 299 of the Indian Penal Code lays down:

"That where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

It is clear from the facts of this case, which are not now in dispute before us, that all seven accused made a deliberate attack upon one man, and ultimately caused his death by fracturing his ribs and rupturing his spleen and inflicting three injuries on his head which left him unconscious and which might in the opinion of the medical officer have also resulted in his death. Even if it be assumed that the accused had no intention of committing wilful murder of the deceased, still the fact that they inflicted 24 injuries on the deceased, about 20 of them being inflicted after the deceased had fallen down and was unconscious, shows that they certainly beat him with the intention of causing such bodily injuries as were likely to cause his death, or with the knowledge that they were likely by such acts to cause his death. It is clear, therefore, that in the circumstances of this case all the accused were clearly guilty of an offence of culpable homicide punishable under section 304 of the Indian Penal Code, if not of the offence

1935

KING-EMPEROR v. SAT NARAIN

of wilful murder punishable under section 302 of the Indian Penal Code.

The learned counsel for the accused has referred us to various rulings of our Court as well as of the Calcutta High Court in support of his contention that the accused were rightly convicted of the offence of voluntarily causing grievous hurt to the deceased. In our opinion the rulings cited by the learned counsel for the accused do not apply to the facts and circumstances of the present case. In *Emperor* v. *Dainullya Molla*, (1) it was held that when injuries have been followed by death and the question is what offence has been committed, it is not concluded by any backward reasoning as to presumable intention from the mere fact that the injuries caused did result in death, and that what has to be seen is what degree of injury the accused actually intended and what they knew as to the consequences of such injuries. Judged by the criterion laid down in this ruling we have no hesitation in holding that the accused in the present case knew that they were likely to cause the death of the deceased and that the actual injuries, 24 in number, inflicted by them, show that they clearly intended to inflict such bodily injuries as were likely to cause death. Both the intention as well as the knowledge that death was likely to ensue can in the present case be imputed to the accused.

Srivastava and Nanavutiy, JJ.

In *Indar Singh and others* v. *The Crown* (2), the facts were that the accused beat the deceased with blunt weapons to such an extent that he died, one of his thighs being a mass of bruises and both legs being fractured below the knee, but no bone in the trunk was found to be fractured nor was the head or any vital organ injured, it was held that in the circumstances of that case the inference to be drawn from the facts proved was that the accused knew that the injuries actually given were likely to cause death, but that those

(1) (1930) 34 C.W.N., 1127. (2) (1928) I.L.R., 10 Lah., 477.

injuries could not be said to be so imminently dangerous that they must in all probability cause death, and so the accused were convicted of an offence under the latter part of section 304 of the Indian Penal Code and not of an offence under section 302 of the Indian Penal Code. Applying the *ratio decidendi* laid down in that case to the facts of the present case, we have no hesitation in holding that all the accused knew that the injuries inflicted by them were likely to cause death, even if no intention of causing such bodily injury as was likely to cause death is to be imputed to them.

In *Karan Singh* v. *King-Emperor* (1), a learned Judge of the late Court of the Judicial Commissioners of Oudh held that the prosecution had failed to show that the accused had the intention of causing such bodily injury as was likely to cause death or that he had the knowledge that by the hurt which he was inflicting he would cause death, and upon that finding it was held that the accused could not be convicted of an offence under section 302 of the Indian Penal Code; but could only be punished of an offence under section 325 of the Indian Penal Code. That ruling, however, has no applicability to the facts of the present case, because here we hold that the accused had the intention of causing such bodily injury as was likely to cause death, and also had the knowledge that they were likely by their conduct in inflicting such injuries to cause death.

Reference was also made to a case decided by us and reported in *King-Emperor* v. *Ratan* (2). In that case the distinction between an offence falling under section 299 of the Indian Penal Code and one falling under section 300 of the Indian Penal Code was explained. That ruling too is hardly relevant for the decision of the present case. Here we are in the circumstances of this case bound to hold that, even if the accused be not held guilty of an offence under section 302 of the Indian

(1) (1924) 11 O.L.J., 563. (2) (1932) I.L.R., 7 Luck., 634.

1935

KING-EMPEROR v. SAT NARAIN

Penal Code, they cannot escape a conviction for an offence under section 304 of the Indian Penal Code.

Reference was also made to a Bench decision of this Court, to which one of us was a party, reported in *Raghunandan* v. *King-Emperor* (1). That case, however, has absolutely no bearing on the facts of the present case.

Srivastava and Nanavutty, JJ.

For the reasons given above, we are clearly of opinion on the evidence on the record, which has not been challenged by the learned counsel for the accused, that all seven accused are guilty of an offence falling in the latter part of section 304 of the Indian Penal Code. We therefore allow this appeal, set aside the conviction and sentence passed upon the accused for an offence under section 325 of the Indian Penal Code, read with section 149 of the Indian Penal Code, and in lieu thereof convict all seven accused of an offence under section 304 of the Indian Penal Code, read with section 149 of the Indian Penal Code and sentence each of them to undergo ten years' rigorous imprisonment.

Appeal allowed.

(1) (1934) I.L.R., 10 Luck. 320.