## APPELLATE CRIMINAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice LeRossignol.*

1923

Dec. 20.

SHERU AND GAMA, Appellants

*versus*

THE CROWN, Respondent.

**Criminal Appeal No. 855 of 1923.**

*Indian Penal Code, 1860, section 302—Death penalty—where accused were under the influence of drink.*

The Sessions Judge held that the culprits went to the field of the deceased with the deliberate purpose of striking down Sazawar (deceased), but he refrained from inflicting the death penalty on the sole ground that the offenders were at the time of the assault under the influence of liquor. There was no evidence to shew that the culprits were in a state of intoxication.

*Held*, that the attack was a premeditated one, and the mere fact that the accused had taken some liquor was not a sufficient reason for not imposing the penalty of death.

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequence of his acts.

*Director of Public Prosecutions* v. *Beard* (1), followed.

*Pal Singh* v. *The Crown* (2), distinguished.

*Appeal from the order of* Sardar *Sewa Ram Singh, Sessions Judge, Lyallpur, at Sheikhupura, dated the 22nd June, 1923, convicting the appellants.*

GHULAM MOHY-UD-DIN, for Appellants.

RAM LAL, for the Government Advocate, for Respondent.

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The judgment of the Court was delivered by :—

SIR SHADI LAL C. J.—On the afternoon of the 9th March, 1923, one Sazawar, an *Arain* of the village Nawan Kot in the district of Sheikhupura, was subjected to a merciless assault, in the course of which he sustained no less than 34 injuries. To these injuries the victim succumbed within three or four hours. Two persons, namely, Sheru and Gama, have been found guilty of the murder of Sazawar; and have been sentenced under section 302, Indian Penal Code, to the penalty of transportation for life each. The prisoners have preferred a joint appeal against their conviction, and we have also before us an application by the Local Government praying for an enhancement of the sentences imposed upon them.

The evidence for the prosecution leaves no doubt that one *Mussammat* Rakhi, the widow of Maula, a relative of the prisoners, contracted a liaison with Shahab Din, the sister's son of the deceased Sazawar. This intrigue caused resentment to Gama and Sheru, with the result that the lovers left the village and migrated to Malakpur where they began to live as husband and wife. The convicts did not, however, like the marriage and were seeking an opportunity to cause injury to Shahab Din and his wife. It is beyond dispute that on the 27th February, 1923, *Mussammat* Rakhi made an application under section 107, Criminal Procedure Code, to a Magistrate, alleging that Gama, Sheru and seven other persons named therein were inimically disposed towards her and her husband and intended to assault them, and praying that they should be called upon to furnish security to keep the peace. It is alleged on behalf of the prosecution that the convicts could not find any opportunity to cause harm to Shahab Din or his wife,

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and that they accordingly decided to assault Sazawar who was not only the maternal uncle of Shahab Din but had also adopted him as his son.

On the day in question a fair was held at a well situate outside the village Nawan Kot, and was attended by a party of pilgrims and the inhabitants of the village including the prisoners Sheru and Gama. It appears that these two persons had taken liquor and that, in a spirit of bravado, they declared that they were going to the deceased's field in order to kill him. The witness Labh Singh, who overheard them, galloped off on a mare to Sazawar's field, and warned him of the danger. Thereupon Sazawar left the field and ran off towards the west, while his companion Ranjha, who was working with him in the field, went off in another direction. Shortly afterwards, the culprits arrived and, finding Sazawar absent, they followed him to another field where he had concealed himself, attacked him with a *dang* and a hatchet, and inflicted upon him a large number of injuries. Upon hearing the outcry of the victim his cousin Alyas, who was cultivating his land at a short distance, hastened to the spot, and saw both the prisoners beating his relative. He tried to intervene but was himself threatened and was rescued by Labh Singh.

This, in brief, is the story for the prosecution and it is fully established by the evidence of a large number of witnesses. Two of them, namely, Alyas and Barkat, saw the convicts beating the deceased, and there is no reason to suppose that they are not telling the truth. Their story receives corroboration from the evidence of Ranjha who saw both the prisoners coming to the field where he was working with the deceased. We have also the testimoney of Labh Singh

who states that he hastened to the scene on hearing the outcry of Alyas and found Sazawar lying injured on the ground and the two accused grappling with Alyas. It is true that Labh Singh's name was not mentioned in the first information report which was recorded by Alyas on that very day; but both the prisoners admit that not only Labh Singh but also Alyas and Barkat were present in the field in which the deceased was lying injured. There can, therefore, be no doubt as to the presence of these witnesses at or near the scene of the occurrence, and we are inclined to think that Labh Singh, when he says that he did not see the actual assault, is trying to favour the prisoners. Be that as it may, there is ample evidence on the record that both of them inflicted upon the deceased a large number of injuries which resulted in his death a few hours afterwards.

The defence put forward by the prisoners does not require any elaborate discussion. They try to make out that the deceased was beaten by some Sikhs belonging to a village called Mangawala, but the learned Vakil for the appellants has not invited our attention to the evidence produced in support of this version. Indeed, he admits that he does not wish to rely upon that evidence, and he has contented himself with criticising the evidence produced by the prosecution. The assessors and the learned Sessions Judge have concurred in declaring the accused to be guilty, and, after examining the entire material placed before us, we have no hesitation in endorsing that conclusion.

As regards the application for enhancement, we find that the learned Sessions Judge holds that the culprits went to the field of the deceased with "the deliberate purpose of striking down Sazawar," but

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he has refrained from inflicting the death penalty on the sole ground that the offenders were, at the time of the assault, under the influence of drink. It may be conceded that both the prisoners had taken liquor, but there is no evidence to show that they were in a state of intoxication. Indeed, the evidence leaves no doubt that before they proceeded to the scene of the incident, they had declared their intention of assaulting the deceased, and that they then walked about a mile, pursued their victim, and inflicted upon him a large number of blows but were careful enough not to deal a deadly blow on the head or any other vital part of the body. The attack was a premeditated one, and we are not prepared to hold that the mere fact that they had taken some liquor should be regarded as a sufficient reason for not imposing the penalty of death. As held by the House of Lords in *Director of Public Prosecutions* v. *Beard* (1), evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. The learned Sessions Judge has relied upon the judgment in *Pal Singh* v. *The Crown* (2), but we find that there were peculiar circumstances in that case which led the Court to commute the sentence of death to one of transportation for life. It appears that the convict had no motive to cause the death of his victim and that the attack was a sudden one. These and other circumstances influenced the Court in holding that there was no adequate ground for making a distinction in the matter of punishment between the

(1) (1920) Appeal Cases 479. (2) 28 P. R. (Cr.) 1917.

accused who had been sentenced to death and his comrade who had been sentenced only to transportation for life. In the case before us we are clearly of opinion that both the prisoners primed themselves with drink in order to wreak their vengence upon their enemy and beat him mercilessly, and we consider that they deserve the maximum punishment provided by law. We accordingly enhance the sentence in the case of each of the convicts to one of death.

*A. N. C.*

*Application by the Crown accepted.*

*Sentence enhanced.*

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## APPELLATE CIVIL.

*Before Mr. Justice Martineau and Mr. Justice Fforde.*

1925

*Nov. 25.*

LAL CHAND AND OTHERS (DEFENDANTS), Appellants,

*versus*

HANS KUMAR AND OTHERS (PLAINTIFFS), *Mst.* LAKHMI DEVI AND OTHERS (DEFENDANTS) } Respondents.

**Civil Appeal No. 95 of 1921.**

*Custom—Pre-emption—Jhelum town.*

The plaintiffs sued for pre-emption in respect of a house by virtue of their ownership of a *serai* called *Serai* Mangal Sain, which was contiguous to the house sold. It was found as a fact that the house sold, the plaintiffs' *serai*, and a few other houses and shops formed a block, which was bounded on all sides by roads and formed part of an area which was known in 1860 as the *Chakla Mohalla*, but which was now no longer known as a separate *Mohalla*. There had not been a single instance of the exercise of the right of pre-emption in this particular block, nor was there any evidence to show that the custom existed in any part of the old *Chakla Mohalla* in which the block was included.