

APPELLATE CRIMINAL.

Before Young C. J. and Sale J.

THE CROWN—Appellant,

versus

RAMJI LAL AND OTHERS (CONVICTS) Respondents.

Criminal Appeal No. 1124 of 1938.

Indian Penal Code (Act XLV of 1860), SS. 34, 149, 302 — Accused divided into two groups — all members of an unlawful assembly — Murder by one group and abduction by another group — in pursuance of common object — liability of members of each group — accused who gave fatal blow not ascertained — Whether a reason for not passing capital sentence on all accused.

Seven accused persons armed with *chhavis* and *lathis* came to the residence of the deceased and divided themselves into two gangs. Three of them attacked the deceased and beat him to death by inflicting *chhavi* and *lathi* blows on him. The other four forcibly abducted the deceased's wife. The Sessions Judge found the case, as presented by prosecution, proved but since only three persons were directly concerned with the murder of the deceased and since it could not, in his opinion, be established which of these three dealt the fatal blow he convicted them under s. 326, Indian Penal Code, only. The other four accused—abductors—were convicted under ss. 323 and 342, Indian Penal Code, since according to the Sessions Judge it was not established that the abduction was committed in the prosecution of the common object of the unlawful assembly. The Crown filed an appeal against the acquittal of the accused under s. 302, Indian Penal Code, urging that all the accused were members of an unlawful assembly and that as the murder was committed in prosecution of the common object of this assembly all should be convicted of murder.

Held, (acquitting one of the seven accused giving him the benefit of the doubt) that all the six assailants were guilty of murder under s. 302, Indian Penal Code, because they were members of an unlawful assembly the common object of

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which was to abduct deceased's wife and murder the deceased and that the Sessions Judge was wrong in holding that merely because the accused on arrival at deceased's house separated into two gangs each gang could therefore only be held guilty for the acts committed by it.

Held also, that where persons have been found guilty of deliberate intention to murder, there is no justification for refraining from passing the death sentence on all concerned *merely* because it cannot be said which of the accused struck the fatal blow.

Mewa v. The Crown (1) and *Chanan v. The Crown* (2), relied upon.

Appeal for enhancement of the sentences passed upon the convicts-respondents by Mr. S. M. Burke, Additional Sessions Judge, Hissar, at Gurgaon, on 18th August, 1938.

M. SLEEM, Advocate-General, for Appellant.

SHABIR AHMAD, for Respondents.

The judgment of the Court was delivered by—

YOUNG C. J.—Seven persons were placed on trial before the learned Additional Sessions Judge, Hissar, charged under section 302, Indian Penal Code read with 149, 366, 365, 147 and 323, Indian Penal Code, with being members of an unlawful assembly on the 6th of March, 1938, at village Kherki-Daula, in the prosecution of the common object of which they murdered Kishan Lal and abducted his wife *Mus-sammatt* Manbhari. These seven persons are Ramji Lal, his two sons Kishori, aged 18, and Tota, aged 16; and his four cousins (who are brothers *inter se*), Umrao, Amin Chand, Udmi and Ghamandi. The learned Additional Sessions Judge found the case as presented by the prosecution proved but since it was alleged that only Kishori, Umrao and Amin Chand

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were directly concerned with the murder of Kishan Lal and since it could not, in the opinion of the learned Additional Sessions Judge, be established which of these three accused dealt the fatal blow he convicted these three accused under section 326 only and sentenced them to six years' rigorous imprisonment. The other four accused were held to have abducted *Mussammat* Manbhari and the learned Additional Sessions Judge considered that it was not established that this abduction was committed in the prosecution of the common object of the unlawful assembly. He, therefore, convicted them under sections 323 and 342, Indian Penal Code, and sentenced them to rigorous imprisonment for six months.

From these convictions and sentences all the accused (except Tota) have appealed. On behalf of the Crown the learned Advocate-General has filed a petition against the acquittal of the accused under section 302, Indian Penal Code, urging that all the accused were members of an unlawful assembly and that as the murder was committed in prosecution of the common object of this assembly all should be convicted of murder.

The case for the prosecution is that *Mussammat* Manbhari, P. W. 2, was first married to Mannu, brother of Ramji Lal: this Mannu died some 15 years ago: subsequently *Mussammat* Manbhari contracted an intimacy with Kishan Lal, deceased, and eventually married him by *karewa*. About a month and a half before the murder Kishan Lal brought *Mussammat* Manbhari to the village of Kherki-Daula where the accused lived. It is common ground between Ramji Lal, accused, and the prosecution that *Mussammat* Manbhari was originally married to Ramji Lal's late

brother, but Ramji Lal denies that she later contracted *karewa* with Kishen Lal, deceased, and alleges that in fact she contracted a *karewa* marriage with him (Ramji Lal).

In any case, on the 6th of March, 1938, *Mussamat* Manbhari was living with Kishen Lal at Kherki-Daula, where accused also live; and Ramji Lal appears to have organised this attack on the house of Kishen Lal and Manbhari with the object of abducting *Mussamat Manbhari* an object in which he certainly succeeded since immediately after this crime *Mussamat* Manbhari was recovered from Ramji Lal's house by the police.

According to the prosecution witnesses the seven accused came in the early afternoon of the 6th March, 1938, to the residence of Kishen Lal, which consists of a *chhappar* and a compound. Umrao and Kishori are alleged to have been armed with *pharsas* (which are in fact *chhavis*) while the remaining five were armed with *lathis*. The seven accused divided themselves into two gangs. Three of them, namely, Kishori, Umrao and Amin Chand, attacked Kishen Lal who was cutting fodder in the *chhappar*; Umrao opened the attack by striking Kishen Lal on the head with his *chhavi*: and when Kishen Lal tried to escape Kishori overtook him and gave him another *chhavi* blow at the back of his neck, while Amin Chand hit him with a *lathi*. In this way Kishen Lal was beaten to death by these three accused. The medical evidence shows that he sustained no less than twenty injuries, many on the head, some of which were incised and some of which were contused. According to the doctor, the actual cause of death was a contused wound caused by some blunt weapon on the middle line of the head which fractured the skull.

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While these three accused were dealing with Kishen Lal, the other four accused, namely, Ramji Lal, Udmi, Ghamandi and Tota, forcibly removed *Mussammat* Manbhari, who received some injuries in the process. She was taken to Ramji Lal's house from where she was recovered by the police.

The first information report was made to the police station on the same day, by the local *safedposh* Sulaiman Khan. It is a brief statement to the effect that Kishen Lal had been murdered in his compound, but does not give the names of the accused, nor does it mention the abduction of *Mussammat* Manbhari. Since, however, this first information report was given on hearsay information, the point is of no importance. It is clear from the evidence of Amar Singh, Lambar-dar, P. W. 20, who arrived at the scene of the occurrence almost immediately after the accused had left, that the names of all the seven accused were mentioned to him at the time by those present and also that *Mussammat* Manbhari had been abducted. This evidence is relevant as being part of the *res gestæ*.

The case for the prosecution depends upon the evidence of four eye-witnesses—*Mussammat* Manbhari, P. W. 2, (wife of Kishan Lal and the woman who was abducted), Dalu, a boy about 14 and a nephew of Kishan Lal who lived in the same house, Nanda, P. W. 4, a near neighbour, who was attracted by the noise of the occurrence and Not Ram, P. W. 5, who was at his well about 50 yards from Kishan Lal's courtyard and who also was attracted by the noise from Kishan Lal's house. Of these witnesses Nanda, P. W. 4 (who seems to have arrived after Not Ram) says that he did not see Kishan Lal being murdered; he only saw the woman *Mussammat* Manbhari being

abducted by Ramji Lal, Udmi, Ghamandi and Tota. He says that he then went in to Kishan Lal's courtyard and saw Kishan Lal lying dead there. The boy Dalu, P. W. 3, and Not Ram, P. W. 5, gave evidence which agrees in all essential particulars regarding the whole occurrence including the murder of Kishan Lal. Their evidence corroborates the statement of *Mussammât* Manbhari, P. W. 2.

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The record does not disclose, and counsel for the appellants has not been able to draw our attention, to any reason why these depositions should not be accepted. It is true that Dalu, P. W. 3, is a boy of about 14 only; but the learned Additional Sessions Judge recorded a note on the record at the time of his examination, that this witness was an intelligent lad and had given his evidence in a convincing and straightforward way. In his judgment the learned Additional Sessions Judge describes Dalu as the "best prosecution witness." Nor is there any reason to doubt the statement of *Mussammât* Manbhari. There can be no doubt that at the time of this occurrence she was living with Kishan Lal as his wife and the fact that she was abducted is proved by her recovery from the house of Ramji Lal by the police at the beginning of the investigation. The medical evidence shows that she had four contusions and abrasions which supports her evidence that she was violently and forcibly removed.

Nanda, P. W. 4, appears to be a disinterested witness whose statement there is no reason whatsoever to doubt. As regards Not Ram, P. W. 5, he admits that four or five years ago Umrao and Kishori, accused, supported a civil case against his brother. It is suggested that for this reason he might be interested

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now in taking his revenge on Umrao and Kishori by assisting in their conviction in the present case. From this point of view it may be that Not Ram's evidence is not disinterested so far as Umrao and Kishari are concerned, but at the same time there appears to be no reason why he should give false evidence against Ramji Lal and his gang as a whole. Even, however, excluding the evidence of Not Ram there is ample evidence to indicate that the case for the prosecution is proved. In the course of the investigation Kishori, accused, produced a *pharsa* or *chhavi* which, on examination by the Imperial Serologist, was found to be stained with human blood. Also in the course of the investigation three *lathis* were recovered from various accused but as they are not proved to be stained with human blood, their recovery is not of any consequence.

The only serious point which the counsel has been able to bring out on behalf of the defence is that Nanda, P. W. 4, does not mention Tota, while *Mussammatt* Manbhari, though mentioning Tota in her evidence in Court, stated before the police during the investigation in her statement recorded on the day of the occurrence, that she did not see Tota. Tota is a lad whose age is given on the record as 16; and in the circumstances we are inclined to give him the benefit of the doubt as to his participation in this affair. We, therefore, acquit Tota and dismiss the Crown appeal so far as he is concerned.

As regards the remaining accused we are satisfied that they participated in this occurrence in the manner stated by the prosecution. The defence evidence which they brought is obviously valueless and has not been relied on by counsel in appeal. It was rightly rejected by the learned Additional Sessions Judge. We

are satisfied that, with the exception of Tota, the six accused were members of an unlawful assembly the common object of which was to abduct *Mussammât Manbhari* and murder Kishan Lal; and that in prosecution of that object they did in fact murder Kishan Lal and abduct *Mussammât Manbhari*. We do not agree with the view of the learned Additional Sessions Judge that merely because the accused on arrival at Kishan Lal's house separated into two gangs, each gang can, therefore, only be held guilty for the acts committed by it. The fact that the accused went together as a body to Kishan Lal's house; and then separated into two bodies shows that they were participating in an organised attack in which each member had his particular function to perform. The function of Kishori, Umrao and Amin Chand was to deal with Kishan Lal and they in fact dealt with him inasmuch as they beat him to death. The remainder of the gang concentrated on to abducting *Mussammât Manbhari*; but they are nonetheless guilty under section 302, because the murder of Kishan Lal was committed in pursuance of the common object of the unlawful assembly.

Now is the learned Additional Sessions Judge right in applying section 326, Indian Penal Code, to the participants in the murder of Kishan Lal merely because he thought it was not clear which of the three actual assailants gave him the fatal blow. It is established beyond doubt that Kishori, Umrao and Amin Chand jointly beat Kishan Lal to death. There were no less than 20 injuries on his person some incised, some contused, indicating that at least two kinds of weapons were used. The doctor says that at least three of the injuries must have been caused by some sharp-edged weapon like a *pharsa (chavi)*, and

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considers that the fatal injury which resulted in the fracture of the skull was caused by a severe blow with a blunt weapon. If the prosecution evidence is correct this blow was probably given by Amin Chand as he was the only one of the three assailants who was armed with a blunt weapon. The point, however, is immaterial. In the circumstances all the assailants are equally guilty of murder under section 302, Indian Penal Code.

The learned Additional Sessions Judge purports to follow the principle enunciated in "A. I. R. 24 Lah. 653" in convicting under section 326, Indian Penal Code. This particular ruling is not traceable and it seems that the learned Additional Sessions Judge has misquoted the reference. We desire, however, to invite the attention of the learned Additional Sessions Judge to *Mewa v. The Crown* (1) and *Chanan v. The Crown* (2) in which it was held that where persons have been found guilty of deliberate intention to murder, there is no justification for refraining from passing the death sentence on all concerned merely because it cannot be said which of the accused struck the fatal blow. There are other authorities of this Court which have more than once overruled the view that where a number of accused participate in beating a man to death under circumstances which amount to murder under section 302/149, Indian Penal Code, the conviction should be under some lesser section than section 302, Indian Penal Code, merely because it cannot be said which accused is responsible for the fatal blow.

We are satisfied in this case that all the accused except Tota (to whom we give the benefit of doubt)

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must be convicted under section 302/149, Indian Penal Code. We accept the Crown appeal against the acquittal of all the accused except Tota, and convict them accordingly under section 302/149, Indian Penal Code. As regards the sentence, we are satisfied that the murder of Kishan Lal was directly committed by Kishori, Umrao and Amin Chand. The murder was deliberate and brutal and we see no extenuating circumstances except for the one fact that Kishori is stated to be a lad of 18 years of age. For this reason alone we give the lesser sentence of transportation for life to Kishori; but as Umrao and Amin Chand are both grown up men we direct that they be hanged by the neck until they are dead. On the ground that Ramji Lal, Udmi and Ghamandi did not directly participate in the murder of Kishan Lal but are constructively guilty, we impose upon them the lesser sentence of transportation for life.

A. N. K.

Appeal accepted.

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