APPELLATE CRIMINAL.

Before Mr. Justice Brett and Mr. Justice Chitty.

ELEM MOLLA

v.

EMPEROR.*

1907
Aug. 7.

Murder—Violent and determined attack by a number of persons, regardless of the consequences, on another causing other injuries and severe ruptures of a healthy spleen—Intent to cause death or such bodily injury as the offender knows to be likely to cause death—Penal Code (Act XLV of 1860 ss. 300 (1) (2) and 302.

A body of six persons attacked another with cattle goads in a violent and determined manner, inflicting sixteen wounds on his body and causing several and severe ruptures of his spleen, and so caused his death. The person attacked was a strongly built man of 35 years of age, and his spleen was in a healthy state :—

Held, that such acts, committed by several persons on one, in such a manner, apparently regardless of the consequences, and with such results, warranted the inference that the acts were done by those persons with the intention either of causing the death of the person attacked or such injuries as the offenders knew to be likely to cause his death : and that the offence amounted to murder.

The two appellants, Elem Mollah and Juran Sheik, together with one Aminuddi Molla, were tried before the Sessions Judge of Faridpur with the aid of Assessors, charged with the murder of Nowai Khan under section 302 of the Penal Code. The Assessors found them not guilty, but the Judge, disagreeing with them, convicted the appellants of murder and sentenced them to transportation for life, and acquitted Aminuddi.

The accused were members of a party that had a long-standing feud with Nowai Khan, the deceased, and his party. There was litigation between them for the past two years, and it appeared that a criminal case was pending at the time of the occurrence. On the 9th March 1907, Nowai Khan went to the Dignagar *hat* in a neighbouring village, about midday, and was returning home when he was waylaid by the two accused and

*Criminal Appeal No. 527 of 1907, against the order of J. F. Graham, Offg. Sessions Judge of Faridpur, dated May 28, 1907.

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others and severely assaulted in a field with cattle goads. He was carried home and water and oil were applied to his wounds. The police and panchayet were sent for, but before the arrival of the former he died. The medical officer, on holding a *post-mortem* examination, found 16 wounds of various descriptions on the body of the deceased, a strongly built man of about 35 years of age. The spleen, which was in a healthy condition, was severely ruptured in several places and nearly torn through at one place.

Mr. B. M. Chatterjee and *Babu Manmatha Nath Mookerjee*, for the appellants.

The Deputy Legal Remembrancer (*Mr. Douglas White*), for the Crown.

BRETT AND CHITTY, JJ. The two accused were placed on their trial before the Sessions Judge of Faridpur, charged, under section 302 of the Indian Penal Code, with having committed murder by causing the death of one Nowai Khan. The two Assessors were of opinion that the guilt of the accused was not established by the evidence adduced. The Sessions Judge, however, disagreeing with the opinion of the Assessors, has found that the charge has been fully proved against them both, and has convicted and sentenced them to transportation for life.

Both the accused have appealed. The case against them was that they, with members of their party, had a long-standing feud with Nowai Khan and members of his party; that litigation had been going on between them for the past two years and that a criminal case was pending on the 9th March 1907. On that date the deceased, Nowai Khan, went to the Dignagar *hat*, which was in a neighbouring village, apparently about midday, and was returning home a little after dusk. While returning, he is said to have been waylaid by the two accused and some other persons, and to have been so severely beaten that he died from the effects.

The case for the prosecution is that the two witnesses, Nowai Sheik and Adiluddi, were returning home from the

Dignagar *hât* just after night-fall on the 9th March, and when they reached a field, called Bhatpara field, they saw a man running towards them down the pathway, that as he came near them he left the pathway for the ploughed fields and then fell. They recognized the man to be the accused Juran Sheik. They asked him what he was doing there, but he gave no answer and ran away. They also saw the forms of other men running away. A few yards further on the road they came across the deceased, Nowai Khan, lying in a wounded state. They questioned him as to who were his assailants, but he asked them to bring water. After water had been brought from a house close by, he informed them that Aminuddi, Juran, and Surah, had attacked him and wounded him in the manner in which they found him.

Kasimuddi, prosecution witness No. 8, appears to have been following these two men from the *hât*, and he says that, as he arrived near the spot where Nowai Khan was discovered, he saw a man run past him and he recognised him to be the accused Elem Mollah. Another man, named Mea Jan, who arrived there afterwards, says that he saw a man run past him and that he recognized him to be Aminuddi Mollah. This man, Aminuddi, was placed on his trial with these two appellants, but the evidence against him was considered insufficient and he was acquitted.

Information was sent to Nowai Khan's brother, Abdul Khan, and assistance having arrived, Nowai was carried to his house. After he arrived there water and oil were applied to his wounds, and the panchayet was sent for. The panchayet, after his arrival, questioned the deceased as to the manner in which he had received his injuries, and asked the names of the persons who had wounded him. Nowai then made a statement, which the panchayet recorded in writing, to the effect that he had been attacked and beaten by six persons, two of whom were the two present accused.

Information was sent to the police, but before the arrival of the police Nowai Khan died. His body was sent to Faridpur for *post-mortem* examination, and the result of that

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examination was to prove that death was the result of extensive ruptures of the spleen. The medical officer in his evidence has stated that he found no less than 16 wounds of various descriptions on the body of the deceased, who was a strongly built Mahomedan of about 35 years of age, and that the spleen was very severely ruptured in several places, and in one place was nearly torn through. The medical evidence leaves, in our opinion, no doubt that Nowai Khan met with his death from violence used towards him by persons other than himself, and that the persons who inflicted those injuries must have inflicted them either with the intention of causing his death, or with the knowledge that such injuries would cause death, or regardless of the consequences of the injuries which they might cause.

The accused Juran was arrested shortly after the occurrence, and Elem was arrested the next day. They were sent to Faridpur, and both of them made statements admitting that they took part with the other men in the attack which was made on Nowai Khan, and which resulted in his death. These statements were withdrawn before the committing Magistrate, but at that time the two accused merely denied that the statements had ever been made. Before the Sessions Court, however, they told a different story, alleging that the confessions had been extorted from them by ill-treatment on the part of the police. The learned Sessions Judge has come to the conclusion that these confessions were voluntarily made and that they are entitled to reliance. He has pointed out that no allegation of ill-treatment was made before the Magistrate, and that the story of torture by the police was apparently an afterthought in the Sessions Court. He has, therefore, treated these confessions as being entitled to reliance, supported as they are by the other evidence in the case.

The other evidence against them consists of the statements made by Nunai Sheik, Mohajudi Sheik, and Adiluddi Sheik. Their depositions are to the effect that just before they reached the spot where Nowai Khan was found they saw the two accused running away from the spot; that when called to they

gave no answers, but continued their flight. There is further the evidence of the witnesses Kasimuddi, Ansuruddi, and Mea Jan, as well as the evidence of the three witnesses already named, who say that immediately after the occurrence the deceased, when asked who the persons were who had attacked and beaten him, named the two accused and some others. There is, besides, the evidence of the panchayet and the statement of the accused recorded by him, supported by the evidence of two witnesses who were present when the statement was recorded. In that statement the deceased clearly named the two accused as having been concerned with others in the attack on him which resulted in his death.

One of the Assessors has declined to believe the evidence of the panchayet and of the persons who testified to the fact that the statement as recorded was made by the deceased before his death, on the ground that the medical evidence shows that the deceased could not have survived long enough to make any such statement. There is, however, the evidence of these three witnesses, as well as of other persons, to prove that the statement was made, and the medical evidence cannot, in our opinion, be taken to go so far as to render it impossible that the statement could have been made. The time during which the deceased may have lived after the infliction of the injuries as given by the medical officer was only approximate, as it would depend to a certain extent on whether the hæmorrhage from the internal organs was rapid or not. We are unable to agree with this Assessor that the medical evidence was such as to render it impossible that the statement could have been made by the deceased to the panchayet.

The other Assessor was of opinion that the case for the prosecution could not be believed, because, in the first information which was given to the police by the brother of the deceased, no mention was made of the dying declaration. The evidence, however, goes to show that the first informant left before the statement was recorded by the panchayet, and the statement appears to have been handed over to the Sub-Inspector of police by the panchayet as soon as he arrived on the spot.

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The learned Sessions Judge, after taking into consideration the confessions of the accused, the evidence of the witnesses, and the statements of the deceased, has come to the conclusion that the two accused were two of the persons who attacked the deceased and inflicted on him the injuries which resulted in his death. The whole of the evidence has been read to us and, in our opinion, it fully supports the conclusion at which the Sessions Judge has arrived, and we agree with his conclusion.

The learned counsel, who has appeared for the defence, has argued that the witnesses who have been examined are some of them men who were not mentioned in the dying declaration or in the first information report, whereas witnesses who are mentioned in those documents have not been examined.

It appears, however, that a number of persons was present at the time when the statement was recorded and when the first informant left to go to the police. It is not improbable that, in consequence, in both of these documents persons were named who had not actually witnessed the occurrence, or that others who were able to give evidence connecting the accused with the crime were omitted.

We do not think that the fact on which the learned counsel relies is sufficient to prove that the whole of the evidence adduced in the case against the accused is not true. Witnesses have been called to prove the existence of the enmity between the two parties in the village, to one of which the deceased belonged and to the other the accused, and the learned counsel does not deny that such enmity existed. He has, however, contended that the existence of that enmity would be as much a reason for the fabrication of a false charge against the accused, as for the accused and the men of his party to waylay the deceased for the purpose of beating him so as to cause his death.

After a careful consideration of the evidence adduced in the case, we are, however, of opinion that it fully supports the conclusions at which the learned Sessions Judge has arrived, that the enmity previously existing between the two parties in the village was a sufficient motive for the attack which was made on the deceased, Nowai Khan.

The learned counsel for the appellants has suggested that his clients had no intention, even if they were concerned in the attack, of doing anything more than to give Nowai Khan a severe beating, and that they had no intention of causing his death. The attack which was made on him appears, however, to have been of a violent and determined character, and the fact that no less than 16 wounds were found on his body, and that his spleen, which appears to have been in a healthy condition, was severely ruptured in several places by the injuries inflicted on him, leaves no doubt that the persons who attacked him either intended to cause his death, or that they attacked him in such a brutal manner, regardless of the consequences, well-knowing that they would be likely to cause his death.

We think that the Sessions Judge is right in holding that the offence committed by the two present accused amounted to murder, and in passing on them the sentences which he has inflicted. We, therefore, confirm the conviction and sentences and dismiss the appeal.

Appeal dismissed.

E. H. M