

APPELLATE CRIMINAL

Before Khosla and Harnam Singh JJ.,

DULLA AND ANOTHER,—*Convicts-Appellants*

versus

THE STATE,—*Respondent*

Criminal Appeal 436 of 1953

1953

Nov. 4th.

Indian Penal Code (Act XLV of 1860)—Section 300 fourthly and section 304, Part II—Difference between.

The two accused gave beating to the deceased as a result of which he died at the spot. In post-mortem examination it was found that only two injuries were grievous which were not on a vital part of the body and the rest were simple. The question arose whether the offence fell under section 302 read with section 34 or under some other section of the Code.

Held, that the accused had beaten the deceased with the knowledge that the beating given was likely to cause death and committed an offence punishable under section 304, Part II, and not section 302 of the Indian Penal Code.

Held further, that in order to bring the case within clause fourthly of section 300 of the Indian Penal Code the prosecution has to establish that the accused committed the act by which the death was caused with the knowledge that the act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. In case the finding of the Court be that the act was done with the knowledge that the act was likely to cause death, the case will not fall within clause fourthly of section 300 of the Code but under Part II of section 304 of the Code.

Barkatullah v. Empress (1) and Indar Singh and another v. Crown (2), relied on; *Qutab Ali and others v. Crown (3)*, *Nawab Ali and Dulla v. Crown (4)*, *Samand Singh and others v. Crown (5)*, *Gurdev Singh v. Emperor (6)* and *Sardula Singh and another v. The Crown (7)*, referred to.

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- (1) 32 P.R. 1887
 - (2) I.L.R. 10 Lah. 477
 - (3) 14 P.R. 1911
 - (4) 31 P.R. 1914
 - (5) 3 P.R. 1919
 - (6) 49 Cr. L.J. 26
 - (7) 1943 P.L.R. 121

Appeal from the order of Shri Gurcharan Singh, Additional Sessions Judge, Ferozepore, dated the 17th August 1953, convicting the appellants.

J. G. SETHI and R. L. KOHLI, for—Appellants.

N. L. SALUJA, for—Respondent.

JUDGMENT

HARNAM SINGH, J. In Sessions Trial No. 37 of 1953 Dulla and Malu have been convicted under sections 302 and 325 read with section 34 of the Indian Penal Code hereinafter referred to as the Code. In that trial the Court has sentenced each of them to death under section 302 and to four years' rigorous imprisonment under section 325 of the Code. In sentencing the accused the Court has ordered that in case the sentence of death imposed upon the accused is confirmed by the High Court, the sentence of imprisonment will not take effect.

Dulla and Malu appeal and the proceedings are before us for the confirmation of the sentence of death imposed upon Dulla and Malu.

In brief the prosecution story is that on the morning of the 13th of October 1952, Chaina went to Babu Ram, P.W. 3, to find out from him the time to his turn of water while Mussummat Tulsi, wife of Chaina, went to the fields. Mussummat Dhapan, who was the first wife of Chaina, followed Chaina and Mussummat Tulsi to the fields with meals for Chaina and Mussummat Tulsi. Chaina saw Babu Ram at about 8 a.m. when he was told that his turn of water was to commence at 8-30 a.m. Going to the fields at about 8-30 a.m. Chaina and Mussummat Tulsi diverted the flow of water towards their field at 8-30 a.m., but Dulla and Malu changed the flow of water towards their fields. Chaina and Mussummat Tulsi went to the spot to remove the obstruction so as to bring the water to their fields. On this Malu gave a blow from the wrong side of the *kassi* on the head of Chaina. That blow was followed by four or

Dulla and
another
v.
The State
—
Harnam Singh,
J.

five blows given by Dulla and Malu to Chaina. Chaina was taken out of the *Khal* and given further blows. Dula and Malu gave blows to Mussummat Tulsi who became unconscious. Mussummat Dhapan and Rehra Ram witnessed the occurrence.

Going to the house of Chaudhry Duli Chand at 10 a.m. Dula, accused, mentioned to him that he and Malu, accused, had murdered Chaina and his wife Mussummat Tulsi.

Chaudhry Duli Chand made the First Information Report, Exhibit P.L., on the 13th of October 1952 at 12 noon, distance between Village Sayyadwala and Police Station Khuian Sarwar being three miles.

Reaching Village Sayyadwala Sub-Inspector Om Prakash found Chaina lying dead and Mussummat Tulsi injured in an unconscious condition. Mussummat Dhapan, Rehra Ram and Mula, *Chaukidar*, were present near the dead body.

Sub-Inspector Om Prakash gave first aid to Mussummat Tulsi. Assistant Sub-Inspector Avtar Krishan, who went with Sub-Inspector Om Prakash, prepared injury statement, Exhibit P.N. and inquest report, Exhibit P.O. of Chaina, deceased. In the inquest report statements of Mussummat Dhapan, Rehra Ram, Mula *Chaukidar* and Surta were recorded.

From the spot Sub-Inspector Om Prakash took into possession blood-stained earth.

Niamat Rai, prepared site-plan, Exhibit P.O., on the 15th of October 1952.

Doctor Kartar Singh, who performed post-mortem operation on the body of Chaina on the 14th of October 1952, found three contused wounds, five abrasions and several contusions. Of the injuries suffered by Chaina two were grievous and the rest were simple. From that evidence it is plain that the grievous injuries were:—

- (1) dislocation of wrist joint; and
- (2) fracture of bones of forearm.

Doctor Kartar Singh gave evidence that he found two contused wounds on the head of Chaina, one on the right side of the head behind the right ear and the other on the left eye-brow. Injuries on the head were simple.

Dulla and
another
v.
The State

Harnam Singh,
J.

In the opinion of Doctor Kartar Singh Chaina died as a result of shock produced by the combined effect of injuries inflicted upon him.

Doctor R. B. Madan, who examined Mussummat Tulsi on the 14th of October 1952, found two contused wounds, seven abrasions, five scratches and five contusion marks. Injuries suffered by Mussummat Tulsi were simple. Mussummat Tulsi remained in the hospital for twenty-five days and during that period she was unable to follow ordinary pursuits of life.

Mussummat Tulsi, P.W. 5, Mussummat Dhapan, P.W. 6, and Rehra Ram, P.W. 7, who witnessed the occurrence, gave evidence at the trial.

Mussummat Tulsi supported the prosecution case in all its details. To similar effect is the evidence given by Mussummat Dhapan, P.W. 6, and Rehra Ram, P.W. 7. As stated hereinbefore, Mussummat Tulsi was seriously injured in the incident.

Counsel for the appellants urges that the evidence given by Mussummat Tulsi and Mussummat Dhapan should be ignored on the ground that they are interested in the deceased. In my opinion the argument carries no force. Mussummat Tulsi was injured in the incident. That being so, it cannot be sustained that she had not seen the assailants of Chaina. On the record there is not a syllable of evidence to suggest that Mussummat Tulsi, Mussummat Dhapan and Rehra Ram had any motive for falsely implicating the accused in the affair. In these circumstances I see no reason to distrust the evidence given by Mussummat Tulsi, Mussummat Dhapan and Rehra Ram. Surta Ram P.W. 4, and Duli Chand, P.W. 14,

Dulla and
another
v.
The State
———
Harnam Singh,
J.

gave evidence that Dulla confessed in the village that he and Malu had killed Chaina and beaten Mussummat Tulsī. Not a syllable of evidence is to be found on the record suggesting any motive on the part of Surta Ram and Duli Chand for falsely implicating Dulla and Malu in the affair. If so, the question that remains for decision is whether the offence falls under section 302 read with section 34 or under some other section of the Code.

Basing himself on *Qutab Ali and others v. Crown* (1), *Nawab Ali and Dulla v. Crown* (2), *Samand Singh and others v. Crown* (3), *Gurdev Singh v. Emperor* (4) and *Sardula Singh and another v. The Crown*, (5), Mr. Nand Lal Saluja urges that the case falls within section 302 of the Code.

In *Qutab Ali and others v. Crown* (1), Kiman, deceased, was beaten to death when he was lying asleep on a *charpoy*. From the medical evidence it was clear that no less than eight distinct incised wounds were found on the face of the deceased and that those injuries were probably caused by a sharp-cutting instrument like a small hatchet. On those facts the Court found that the person or persons who attacked and wounded Kiman, as he was lying asleep, must be taken to have intended to cause his death or to cause such bodily injuries as he or they knew to be likely to cause his death.

In *Nawab Ali and Dulla v. Crown* (2), the assailants of the deceased had beaten him with sticks so severely that he died within a few minutes, no less than 14 ribs being fractured resulting in rupture of both lungs and of the spine. On those facts the Court thought that it was hard to see how the assailants beating him to a jelly and

(1) 14 P.R. 1911
 (2) 31 P.R. 1914
 (3) 3 P.R. 1919
 (4) 49 Cr. L.J. 26
 (5) 1943 P.L.R. 121

fracturing 14 ribs could have had any intention short of causing death or causing such bodily injuries as they knew were likely to result in death.

In *Samand Singh and others v. Crown* (1) the four accused had caused the death of the deceased by giving him an unmerciful thrashing with sticks smashing both bones of each forearm, the right elbow and right knee-cap and the occipital area on the right temporal area of the skull. In that case the accused after carrying the deceased into the house of Samand Singh further proceeded to beat him. In deciding that case the Court found that the accused committed the acts with the intention either of causing death or of causing such injuries as they knew to be likely to cause death.

In *Gurdev Singh v. Emperor* (2), the deceased was given 34 injuries of which 14 were caused with sharp-edged and sharp-pointed weapons including two which were grievous and the rest were caused with blunt weapons including one which was grievous. In that case the evidence given at the trial was that when the assailants left the man for dead and he asked for water they again returned and resumed beating. On those facts the Court found the assailants did intend to cause death and not only such injury as was likely to cause death.

In *Sardula Singh and another v. Crown* (3), from the medical evidence it was plain that the whole of the back of the deceased was covered with contusions and abrasions and his eight ribs had been fractured. In that case the Court came to the conclusion that it could not be reasonably held that the accused had no intention to cause bodily injury which was sufficient in the ordinary course of nature to cause death.

In criminal cases previous decisions, proceeding as they do on their own set of facts, seldom afford any very great assistance in deciding the nature of an offence.

Dulla and
another
v.

The State

Harnam Singh,
J.

(1) 3 P.R. 1919

(2) 49 Cr. L.J. 26

(3) 1943 P.L.R. 121

Dulla and
another
v.
The State
—
Harnam Singh,
J.

In the present case no grievous injury was given on any vital part of the body. In post-mortem operation Doctor Kartar Singh found two grievous injuries, one dislocation of the wrist joint and the other fracture of the bones of the forearm. Mussummat Tulsi gave evidence that no injury was given to Chaina with the *kassi* that was with Malu, accused. On these facts it is conceded that the case does not fall within the first three clauses of section 300 of the Code.

But it is said that the case falls within clause fourthly of that section. In order to bring the case within clause fourthly of section 300 of the Code the prosecution has to establish that the accused committed the act by which the death was caused with the knowledge that the act was *so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death*. In case the finding of the Court be that the act was done with the knowledge that the act was likely to cause death the case will not fall within clause fourthly of section 300 of the Code but under Part II of Section 304 of the Code. On this point *Barkatullah v. Empress*, (1), and *Indar Singh and another v. Crown* may be seen.

In Inder Singh and another v. Crown (2), Dalip Singh, J. (Zafar Ali, J., concurring) said :—

“Now, fracturing the legs of a man cannot, in my opinion, be held to come within the second and third clauses of section 300 in a case like this where the fractures were caused, as the medical evidence shows, by blunt weapons only. Nor, in my opinion, does it come within the fourth clause of section 300 as the act cannot be said to be so imminently dangerous that it must in *all probability cause death*. This being so, the offence can only come within

(1) 32 P.R. 1887

(2) I.L.R. 10 Lah. 477

section 299. In my opinion it does not fall within the first or the second part of section 299, but I think that the appellants may be credited with a knowledge that the beating that they did actually give to Dewa Singh was likely to cause death. To beat a man to such an extent that one of his thighs is a mass of bruises, to fracture both his legs below the knee and also give him various other minor injuries on the legs and on the trunk is, I think, to do an act which the offenders knew was likely to cause death because of the injuries actually given and the shock ensuing. As the learned Sessions Judge remarks it is a moderate estimate to hold that Dewa Singh had at least thirty injuries on his person. In the circumstances, therefore, *I would hold that the offence comes within the third part of section 299 and is, therefore, punishable under section 304, Part II of the Indian Penal Code.*"

Dulla and
another
v.
The State
—
Harnam Singh
J.

In the evidence given by Doctor Kartar Singh there is no indication that the injuries suffered by Chaina were so *imminently dangerous* that they must in all probability cause death, or such bodily injury as was likely to cause death. In the circumstances the appellants may be credited with the knowledge that the beating that they did give to Chaina was likely to cause death.

Finding as I do, that the appellants beat Chaina with the knowledge that the beating given was likely to cause death, I set aside the conviction of the appellants under section 302 of the Code and convict them under Part II of section 304 of the Code.

In giving injuries to Mussummat Tulsi the accused committed an offence punishable under

Dulla and
another
v.
The State

section 325 of the Code. That being so, I maintain the conviction of Dulla and Malu under section 325 of the Code and the sentence imposed upon them for that offence.

Harnam Singh,
J.

In the result, I would order that Dulla and Malu should suffer rigorous imprisonment for seven years under section 304, Part II, of the Code and rigorous imprisonment for four years each under section 325 of the Code, sentences to run concurrently.

For the foregoing reasons I refuse to confirm the sentence of death imposed upon Dulla and Malu.

Khosla, J.

KHOSLA, J. I agree.

APPELLATE CRIMINAL

Before Kapur and Dulat, J J.

AMAR SINGH AND ANOTHER,—*Convicts-Appellants*

versus

THE STATE,—*Respondent.*

Criminal Appeal 488 of 1953

1953

Nov. 11th

Code of Criminal Procedure (Act V of 1898)—Section 239—Joint Trial of several persons—Conditions requisite—"The same offence"—Meaning of—Infringement of Section 239—Whether constitutes illegality or irregularity—Two versions of prosecution story—One version making one set of persons liable and other version making the other set of persons liable—Duty of prosecution and function of Court in such cases—Sections 169 and 170—Retrial in such cases—Whether advisable.

In this case one set of witnesses made N alone liable for all of the offences committed while the other set or witnesses made the other six accused persons liable for those