
(1895) 01 CAL CK 0008
In the Calcutta High Court

Dewan Singh and Others

APPELLANT

Vs

The Queen-Empress

RESPONDENT

Date of Decision : 08-01-1895

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 149, 149, 302, 326

Citation : (1895) ILR (Cal) 805

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

Norris and Beverley, JJ.—In this case the following eight persons, namely (1) Dewan Singh, (2) Nag Singh, (3) Bhairo Singh I of Gothuni, (4) Harbons Singh, (5) Harkat Singh, (6) Bhairo Singh II of Kansara, (7) Madho Singh, and (8) Ishur Singh have been convicted of being concerned in a riot, in which one man Kali Singh was killed and Nemdhari Singh and several others were wounded. They were all charged with having committed offences under (1) Section 148; (2) Section 302/149; (3) Section 326/149, the murder charge being in respect of the death of Kali Singh and the grievous hurt that caused to Nemdhari Singh. The assessors found all the accused guilty under the first charge but not guilty under the other two charges, because they could not implicate any of them in the injuries caused either to Kali Singh or to Nemdhari Singh. The Sessions Judge, on the other hand, has found all the accused guilty on all three charges, but as he finds that certain only of the accused, viz., Dewan Singh, Bhairo Singh I, and Harkat Singh, were directly implicated in causing the death of Kali Singh, he sentences those accused only to transportation for life u/s 302/149 passing no sentence on them in respect of the other charges; similarly, he finds that certain others of the accused, viz., Harbuns Singh, Bhairo Singh II and Ishur Singh, were directly implicated in the grievous hurt caused to Nemdhari Singh, and he sentences those accused to seven years' rigorous imprisonment u/s 325/149 or Section 326/149(it is not clear which), and to three years in addition u/s 148, but he passes no sentence on them u/s 302/149. The other two accused viz.,

Nag Singh and Madho Singh, he sentences only to three years" rigorous imprisonment u/s 148, passing no sentence on them in respect of the other two charges. The result is that in respect of two of the accused, the Sessions Judge has sentenced them u/s 148 only, though he has found them guilty of graver charges under Sections 302/149 and 326/149 and as regards three others he has passed no sentence u/s 302/149 though he has found them guilty of murder under that section.

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[The learned Judges after dealing with the facts of the case and acquitting; Madho Singh, accused No. 7, as it was not shown that he took any active part in the riot, continued:]

2. The next question is, what offences have the rest of the accused committed, and what are the proper sentences that should be imposed on them? The Judge, as we have said, has found that by virtue of Section 149 of the Penal Code the accused are all guilty of murder, and of voluntarily causing grievous hurt, as well as of the minor offence of rioting armed with deadly weapons.

3. On the question of sentence, the Sessions Judge remarks as follows: "In a recent case decided by me at Sessions, I held, following the Full Bench decision in Nilmony Poddar v. Queen-Empress ILR Cal. 442, that I could not convict persons who were not actually implicated in the offences, charged u/s 149 in addition to the offence charged u/s 148.. Their Lordships, Petheram, C.J., and BEVERLEY, J., however, pointed out to me that under that ruling it was not the conviction, but the separate sentence which was declared illegal. I now see that I was wrong in my previous, finding, but a further and very grave difficulty presents itself in this case, for which, as far as I know, there has been no authoritative decision. This is that when it becomes the duty of the Court to sentence a batch of rioters u/s 302 read with Section 149, the least sentence it can pass under that section is transportation for life. Can the Court convict and sentence on the first; count and on any other count decline to pass any sentence? As I read the ruling in Nilmony Poddar v. Queen-Empress ILR Cal. 442, the Court can give the sentence either u/s 148 or u/s 149 read with some other section, but not under both, unless the prisoner is individually implicated in the further act charged u/s 149. Am I therefore, at liberty to sentence u/s 148 and ignore the minimum-penalty u/s 302? I come to the conclusion with much hesitation that I am in the case of those prisoners who are not implicated in the specific-offence of murder. I agree with the assessors that in this case both the offences of murder and grievous hurt, with deadly weapons, were committed in prosecution of the common object of the unlawful assembly; and I am, therefore, bound to convict all the accused who are convicted u/s 148 u/s 302 read with Section 149, and also u/s 326 read with Section 149. In the ordinary way, if a prisoner were convicted before me under Sections 148 and 326 read with Section 149, I should inflict the necessary sentence under the graver charge alone if the punishment therefor provided were in my opinion sufficient; but in this case I

consider it best to pass separate sentences on those implicated in causing grievous hurt to Nemdhari Singh,, so as to avoid the difficulty of passing sentence u/s 326 alone on prisoners who have also been convicted u/s 302. I shall, therefore,, sentence Bhairo Singh of Gothuni, Harkat Singh and Dewan Singh u/s 302 alone, since it would be futile to sentence them under both Sections 148 and 302. Harbuns Singh, Bhairo Singh II, and Ishur Singh will be sentenced under both Sections 148 and 326 read with Section 149, and Madho Singh and Nag Singh u/s 148 only. As the unfortunate death of Kali Singh was wholly unpremeditated, and his assailants are not really more guilty than those who might have just as probably caused the death of Nemdhari, I shall pass the minimum sentence I am empowered by the law to pass u/s 302, and shall pass the extreme sentence under Sections 148 and 325 read with Section 149 on those implicated in the assault on Nemdhari Singh, since it is not clearly shown that these men used anything but lathis. The other two can only be punished with the extreme sentence u/s 148."

4. We are of opinion that the Sessions Judge has fallen into a most grave error in this passage of his judgment. Having found all the accused guilty u/s 302 of the Penal Code, he was bound by law to sentence them for that offence. Section 302 enacts that "whoever commits murder shall be punished with death or with transportation for life, and shall also be liable to fine," and there is no provision of law authorising a Court to refrain from passing the sentence provided by the Code. If, therefore, the offence which the appellants have committed is murder, they must be sentenced to one or other of the punishments provided by Section 302. It cannot be contended that the law gave a discretion to a Court which convicts of that offence to award or not the punishment provided for it. The only discretion which the law allows to the Court is to determine which of the two punishments prescribed should be awarded, regard being had to the circumstances of the particular case. In the present case, therefore, if we are of opinion that the finding of the Sessions Judge can be affirmed, and that all the accused are guilty of murder, it will be our duty under the provisions of Section 439 of the Code of Criminal Procedure to call upon such of the accused as have not been sentenced for that offence to show cause why they should not be so sentenced. It is necessary, therefore, to examine in some detail the facts and circumstances upon which the Judge has come to that finding.

5. In dealing with this matter, the Judge says as follows: "Now comes the question whether the acts, which resulted in the death of Kali Singh, amount to murder. The assessors and the committing Magistrate have found that they do, and the latter has given strong reasons for his finding. The assault on the deceased Kali Singh was undoubtedly premeditated, though I do not imagine the rioters originally intended to kill him. The assault was undoubtedly done with the intention of causing bodily injury to Kali Singh, and the bodily injury intended to be inflicted must, as the Joint Magistrate points out, be deemed to be that which was inflicted, since the rioters used gurasas and lathis with deadly violence on the head, body and limbs of Kali Singh, without care or restraint of any kind. This

bodily injury was, as the Civil Surgeon shows, sufficient in the ordinary course of nature to cause death, and I am, therefore, bound under the terms of Section 149 of the Indian Penal Code to find all the rioters guilty of murder."

6. In the first place we must point out that the Judge's reference to the opinion of the committing Magistrate is wholly irrelevant, and should not have found a place in his judgment. The decision of the case is vested by law in the Sessions Judge sitting with assessors, and the Judge is bound to form his own opinion on it, aided by the assessors indeed, but quite independent of any expression of opinion on the part of the committing Magistrate. No doubt the Judge has formed his own opinion in the matter, and only seeks to fortify it by reference to the opinion of the Magistrate. But any such reference is not only out of place but wrong, inasmuch as the Magistrate was not present at the trial, did not hear what the witnesses said in the Sessions Court, and had no jurisdiction whatever to come to any decision in the matter.

7. In the passage just quoted, the Judge finds that, although the assault was premeditated, the rioters did not intend to kill Kali Singh, but that inasmuch as they intended to cause him bodily injury, such as was sufficient in the ordinary course of nature to cause death, they are guilty of murder. In a subsequent passage he remarks that "the unfortunate death of Kali Singh was wholly unpremeditated, and his assailants are not really more guilty than those who might have just as probably caused the death of Nemdhari."

8. Now, as we have already said, we have in this case only one story told, and that is the story for the prosecution. The accused do not attempt to set up a different state of facts; the defence in the case of the majority of them is that of an alibi which they have failed to substantiate. We must, therefore, accept the story told by the prosecution, and according to that story the accused went in a large body armed with lathis and gurasas to take forcible possession of land which had up to that time been in Nemdhari Singh's possession. Kali Singh was a brother of Nemdhari Singh, and had an interest in a small portion of the land which was grown with sugarcane. They and others of their relatives went to expostulate with the men who were ploughing up their land. Their case is that they went quietly, and it is not shown that they were armed or used any force. It does not appear that any one on the side of the accused was hurt in any way. On the other hand, brutal violence was used by the accused, a number of whom set upon Kali Singh and beat him to death. The medical evidence is thus summed up by the Judge:

9. The medical evidence discloses that Kali Singh's death was due to shock caused by excessive violence. He had many ghastly wounds, and the left temporal bone was dislodged, and there was effusion of blood on the brain, but the Civil Surgeon is unable to say which blow of the numerous ones showing externally caused these fatal symptoms. In addition to these, the left thigh bone, the left fifth rib, and the fifth metacarpal bone of the right hand were found fractured. Two of the wounds, one behind the left ear and one a punctured

wound on the left upper arm, were probably caused by a pole-axe, the blade being apparently employed in the first case, and the point in the second." Dr. Macrae's evidence as to the cause of death is in these words: "Death in my opinion resulted from shock from the numerous injuries which had apparently been inflicted with much violence. It is difficult to differentiate, because he had so many injuries on the head." From this evidence it is quite clear that Kali Singh was beaten to death by a number of persons armed with lathis and gurasas which were freely used upon his head and other parts of his person, and we quite agree with the Sessions Judge that all those who took a part in inflicting these injuries must have known that death was a probable consequence, and that the offence was murder. We think, too, that every member of that unlawful assembly, which went out armed with the object of taking possession of the land and repelling by force any resistance that might be offered must have known that murder was likely to be committed, and is, therefore, guilty of murder by virtue of the provisions of Section 149 of the Penal Code. There are numerous reported cases to this effect, and we see nothing in this case that would take it outside the scope of the section. On the contrary, it appears to us that the present case is one of the worst that has come before us, and there is no reason whatever why the principle of those decisions should not be followed.

10. We accordingly dismiss the appeal of all the accused (except that of Madho Singh whom we have acquitted). We confirm the sentence of transportation for life that has been passed on Dewan Singh, Bhairo Singh I, and Harkat Singh, and we direct that notice be served on the accused Harbans Singh, Bhairo Singh II, Ishur Singh and Nag Singh to show cause why they should not also be sentenced for the offence of murder which they are found to have committed.