
(1934) 11 AHC CK 0016
In the Allahabad High Court

Pan Singh and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 15-11-1934

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 201, 326, 326

Citation : 153 Ind. Cas. 425

Hon'ble Judges : Kendall, J

Bench : Single Bench

Judgement

Kendall, J.—The appellants Pan Singh, and his sons, Nar Singh and Mohan Singh, and also Chunni, have been convicted by the learned Sessions Judge of Kumaon of offences under Sections 326 and 326-109, Indian Penal Code, and sentenced, the first three to five years' rigorous imprisonment and the fourth to three years rigorous imprisonment under those sections, and Chunni has also been sentenced to two years' rigorous, imprisonment under, Section 201, Indian Penal Code. The story told by the witnesses for the prosecution is an unusual and painful, one; but there is no doubt whatever, that it is true. It has been described in full by the learned Sessions Judge. The appellants are hillmen from the Almorah District, and the first there are apparently, what are called devil dancers, who attempted, at Chunni's request, or at any rate with his consent, to dispossess Chunni's wife of a devil by applying a hot ladle (Karchhuli) to her mouth and throat and to various parts of her body, with the result, that she died. Chunni Subsequently became frightened and buried the body of his wife, and for this reason, he has been convicted u/s 201, Indian Penal Code, as well as of abetting the other offence.

2. Musammat Mohania, which is the name of the unfortunate woman, had been ill. So far as the oral evidence goes it only appears that she was suffering from a fit of giddiness. But Dr. Faruki, the, Medical Officer who performed the post mortem examination stated in evidence that she had been suffering from disease of the right lung, probably tuberculosis, and also from malaria, However, that

may be, Chunni--who had already consulted the witness Bhairab Dat about her called in the other three appellants to treat her. Between them they decided that she was possessed of a devil, and they attempted to exorcise it by applying a heated ladle to her mouth, to her private parts and to other parts of her body. She abused them and evidently had the strongest objection of the treatment. But the appellants appeared to have believed that though her body was her own, her mind was in the possession of the devil, and that it was the devil that was abusing them and objecting to the treatment. It appears from the medical evidence that the ladle was thrust right into her mouth, and two of her front teeth were broken. Chunni did not take part in the actual treatment, but he consented to it apparently in the belief that the devil would be exorcised. Bhairab Dat, the neighbour who had already been consulted by Chunni, heard cries from Chunni's hut and sent his servant to see what the matter was, and the servant came back with the news that devil dancing was going on and that Chunni's wife was being branded by the appellants, Nar Singh and Pan Singh, while another man was helping to hold the woman down. Next morning the woman, who was still alive, sent her son to Bhairab Dat who went to see her, and she was able to tell him roughly what had happened. Bhairab Dat, who was ill himself, told Chunni to take the woman to hospital, but Chunni did nothing, and as Bhairab Dat was not able to do anything effective, the unfortunate woman died without any medical help. Bhairab Dat subsequently discovered that the woman had died, and had been quietly buried, and he made a report on January 22, at 4 P.M.

3. Mr. Kapil Deva Malaviya, who appeared in this Court for the appellants, did not attempt to controvert the facts which had been found proved on behalf of the prosecution. He argued, however, in the first place that the offence was not one that was covered by the provisions of Section 326, Indian Penal Code but that Section 304-A would be more appropriate, and that in any case the sentences were too severe as all of the appellants were acting in good faith, though in great ignorance, with the object of curing the woman by dispossessing her of the devil. However ignorant the appellants may have been and however barbarous their methods, he suggested that as they had been in jail for several months, the law would be satisfied if they were to be punished with the imprisonment which they have already undergone.

4. As regards the first part of this argument, I think there can be no doubt that Section 201-A will not apply. The appellants were not acting rashly or negligently, but deliberately. Section 326 will apply if the appellants voluntarily caused grievous hurt, by means of any heated substance. I have, no doubt that the ladle comes under the category of "substance", and it was certainly heated. The hurt was grievous because it endangered life, and it was, caused voluntarily because the appellants must be held to have known that they were likely to cause hurt which endangered life. Sections 88 and 92 of the Indian Penal Code have been referred to, but it is quite, clear that the woman did not give her consent to this abominable treatment; and, though the appellants may have thought that it was impossible for her to signify, consent--because the devil was in possession, of her

and they believed that it was the, devil who was addressing them that is not a view which can be taken by the Court. The argument that has somewhat appealed to me is that their ultimate motive was to cure the woman, and that however barbarous their methods were, they were certainly acting in good faith. I have, therefore, taken time to consider whether for these considerations the sentences inflicted by the learned Sessions Judge ought to be reduced. I have not seen any precedent that can be of any great use, though the instances of satti which are occasionally still brought to light are to some extent analogous. Those who take part in a satti, however, do not do so with the motive of saving mortal life, and the appellants may therefore claim more consideration than the abettors a of satti. On the other hand, it would be extremely dangerous in any way to countenance a crime of such a heinous nature on the ground that it was only believed to be the means to an end which is worthy of praise. If the offence had been committed with a motive that was ultimately criminal for instance, in the course of a dacoity, the suitable punishment would undoubtedly have been transportation for life, and I do not think that the Judge has erred on the side of severity in inflicting half the maximum penalty u/s 328. It is possible, however, to reduce the sentence of Chunni u/s 201 of the Indian Penal Code on the ground that his action appears to have been due to panic rather than a deliberate attempt to shield his confederates from punishment. I must, therefore, uphold the convictions and sentence under Sections 326 and 326-109, Indian Penal Code and only allow the appeal to this extent that the sentence of Chunni u/s 201, Indian Penal Code is reduced from two years" to one year"s rigorous imprisonment.