

BOMBAY HIGH COURT

Emperor

Vs

Sardarkhan Jaridkhan

(Beaman, C.J. Heaton, J.)

24.08.1916

JUDGMENT

Beaman, J.

1. The accused's father had a quarrel with the deceased as a result of which the deceased was discharged from the mill. The evidence is that he entered the mill after this and threatened the accused, who is a young man of about seventeen or eighteen. The accused appears to have lost his temper, rushed out and brought two sticks one of which he gave to the accused No. 2, who is seven years older than accused No. 1 and who resides with him and his father. Accused Nos. 1 and 2 immediately went out with the object of driving the deceased off the mill premises as they say, or, as is implied in the finding of the learned Sessions Judge, assaulting him. Unfortunately, the two accused came upon the deceased sitting with his back towards them just outside the weaving shed, and the evidence is that the accused, being armed with a stick about three feet long having iron rings and about an inch in diameter, suddenly struck the deceased a violent blow on the back of the head which, as the medical evidence shows, resulted in death within a few hours.

2. Mr. Thakor on behalf of the accused has not disputed the substantial fact of the killing, though he has pressed upon us a consideration of the possibility at least of the fatal blow having been struck by the accused No. 2, We do not see any reason to doubt the correctness of the conclusion reached by the learned Sessions Judge upon this point.

3. We have, therefore, only to consider whether the killing in such circumstances amounts to murder or can be reduced to the lesser offence of culpable homicide not amounting to murder. If murder, it can only be so under the 3rd clause of Section 300 which enacts that " Culpable homicide is murder if the death is caused by an act done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death." Now where death is caused by a single blow, as is the case here, struck probably under the influence of passion, it must always be a nice and difficult question to

determine the precise intention of the offender. Doubtless the learned Sessions Judge has followed what in a majority of cases-we think we must concede-to be the right and logical course. He has inferred the intention, that is to say, from the extent of the injury and the nature of the weapon used. On the other hand, where cases of this kind are tried by Jury, Juries are much more disposed to take a liberal and less logical view and to look at all the surrounding circumstances with the object, if possible, of reducing the offence and so, notwithstanding the character of the injury and the nature of the weapon, imputing a lesser intention to the accused. Where, as we began by saying, death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended, particularly where the weapon used, although a very dangerous weapon, is one which is in the hands of so many people in that part of the country every day of their lives when they go about their ordinary field business. It is upon this ground-and upon this ground alone-that we are disposed to take a more lenient view of the offence committed by the accused than that which the learned Sessions Judge took. After all it must, in a case of this kind, be a matter of inference and nothing more, and while admitting that the inferential processes of the learned Judge are in accordance with what we conceive to be the common and best mode of administering this branch of criminal justice, there may be exceptional cases and exceptional circumstances which would warrant us, sitting here as Judges of final appeal, in taking what we have said might be a Jury's rather than Judge's point of view. And if looking at the case thus, we feel that it might not unreasonably be brought within the lesser offence of culpable homicide not amounting to murder, while even in the opinion of the Sessions Judge the actual degree of criminality belongs more properly to that than to the offence of murder, we do not think that we are really stretching the law at all by adopting a less strict mode of inferential reasoning. We feel that this is a case in which the sentence of transportation for life would in any event be out of proportion to the real criminality of the accused's act.

4. That being so, we find the less difficulty in coming to the conclusion that it is possible the blow he struck exceeded in violence the injury he had in view at the moment of striking it. His mind could not have been very clear and it is hard to say that he could have had any definite intention of any kind at the moment. But in saying this, we do not wish to encourage loose applications of such inferential processes giving too liberal an extension to the provisions of Section 300, Clause (3). Every case must be dealt with on its own facts, and this case is, we think, one which will allow us so far to agree with the learned pleader of the prisoner as to hold that the killing here can' properly and legally be brought under Section 304 rather than Section 302.

5. We shall, therefore, alter the conviction from murder to culpable homicide not amounting to murder under the second part of Section 304 and direct that the prisoner be sentenced to five years' rigorous imprisonment.