

Ramesh Chandra Malakar Vs. the State

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Court : Guwahati

Decided On : Mar-12-1953

Judge : Lakshmi Narain, J.C.

Appellant : Ramesh Chandra Malakar

Respondent : The State

Judgement :

Lakshmi Narain, J.C.

1. This jail appeal has been filed by Ramesh Chandra Malakar against his conviction and sentence under Section 304, Part II, I.P.C. for 4 years R.I. passed by the Sessions Judge Agartala in his Court's Sessions trial No. 7 of 1952.

2. The facts of the case are simple enough. It is alleged that on 21.9.1950 in the evening the complainant and his brother P.W. (?) wanted to erect a Bundh to bring down water to their fields which was to flow through the land of the accused. The accused did not allow it, though told by the complainant that it would do him no harm. Just then, the complainant started to call the Sardar of the village to come over and settle the matter. He had left his younger brother Jogendra on the spot. He had hardly gone a little distance when he heard shouts of Jogendra that he was being assaulted by the accused. The complainant returned to see that his old father who had by this time intervened, was being given blows by the accused. He himself saw the accused striking him with a bamboo stick on his old father's left

hand and then while he (the father) raised his hand in self defence, on the left side of the abdomen. The father fell on the ground after going a few paces and died. The matter was reported to the police who came on the spot the same night and started investigation which culminated in the chalan of the accused under Section 304, I.P.C.

3. The post-mortem examination resulted in the finding of 3 ribs (8 to 10) fractured and spleen ruptured due to striking of the-fractured ribs.

4. Ramesh Chandra Malakar after enquiry was committed to the Sessions for trial for the same offence and has been convicted to 4 years R.I., hence this appeal.

5. The accused appellant pleaded not guilty to the above charge. He has produced no defence.

6. I have very carefully gone through the evidence of the case. The prosecution evidence leave no doubt in the mind that the appellant gave two blows to the deceased with a bamboo stick, one on the left hand and the other on the left side of the chest when the deceased had raised his left arm in self-defence of the attack. No provocation is alleged and none is proved to be there. The only point for determination, therefore, is whether the offence committed falls under Section 325 or 304 Part II of the I.P.C.

7. Abdomen is a delicate part of the body and vulnerable too and when violence is used on it either from the front or from the side, resulting in fracture of ribs and rupture of the spleen, it can be safely presumed that the accused should have known that such a violence on his part was likely to cause death of the person to whom it was used and more specially in the present case when the man was old, sickly and infirm. The accused in this case must be credited with the knowledge that he was likely to cause the death. He is, therefore, guilty under Section 304, Part II, I.P.C. and has been rightly convicted under that section.

8. The minor discrepancies in the statements of the prosecution witnesses are not of much importance. They are not so material as to damage the prosecution case.

However, keeping in mind all the circumstances of the case, I think that a sentence of 4 years R.I. is a bit harsh and specially when the accused has been retting in Hajat for a period of nearly 2 years. His sentence of 4 years R.I. is, therefore, reduced to that of 2 years R.I.

9. This appeal is allowed only to the extent of sentence alone as stated above, otherwise stands rejected.

10. Appellant to be informed.

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