

Lianthlira Vs. the State

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Court : Guwahati

Decided On : Apr-30-1952

Judge : Ram Labhaya, Ag.C.J. and Deka, J.

Appellant : Lianthlira

Respondent : The State

Judgement :

Ram Labhaya, Ag.C.J.

1. The appellant in this case was convicted under Section 304, Part, n, Penal Code for causing death of Chalmawai, deceased and was sentenced to rigorous imprisonment for 4 years.

2. The prosecution case was that the deceased, his wife, the accused and his son Rivunga (P.W. 6) aged about ten years were sitting together and, taking their meal. The accused finished first and pushed the cooking pot to one side in order to make way for himself. The floor was rendered dirty by its impact. This provoked a protest from the wife of the deceased. The deceased also lost temper. This led to a quarrel. The accused then hit the deceased with a piece of firewood. This broke and he picked another. The deceased was hit again on the head and on his left side. Chalmawai fell down and died soon after.

3. Only the son of the accused aged ten was examined at the trial from the eye-witnesses. The two other eye-witnesses could not attend the Court at the time of

the trial. P.W. 5, father of the deceased, came to the scene soon after the accused and deposed that he had been informed by the accused that he had hit the deceased.

4. The accused pleaded guilty. He admits that there was a quarrel between him on one side and the deceased and his wife on the other and that he hit the deceased with a piece of firewood. That deceased fell down in consequence.

5. The facts are not in dispute. The plea of guilty is also there.

6. The accused has appealed from jail. The perusal of the record shows that the legality of conviction under Section 304(II) is open to question. The body of the deceased was in a decomposed state, at the time of the Post Mortem examination. The medical witness could not give any definite opinion as to the cause of death though he expressed the opinion that most probably death was due to the rupture of the spleen. Rupture, he thought, could be caused by striking with a piece of wood or even by a fall particularly if the spleen is enlarged. So advanced was the stage of decomposition that no external injury could be seen.

7. The opinion that death was in all probability due to the rupture of the spleen particularly if it was enlarged is more in the nature of a hazardous guess than any thing else. The fact, therefore, remains that the cause of death could not be found. In these circumstances conviction under Section 304(II) would not be legal. If injuries caused by the accused are not shown to have caused death, the case would not be covered by Section 304(II). It would be equally difficult to place it under Section 325, Penal Code as the nature of the injuries is not proved. The accused admits beating. A conviction under Section 323, Penal Code is all that is possible in these circumstances.

8. The accused having pleaded guilty has no right to challenge the legality of his conviction by an appeal. This Court, however, can draw on its revisional jurisdiction when, notwithstanding the plea of guilty, the legality of conviction can be successfully challenged. In these circumstances we alter the conviction of the appellant to one under Section 323, Penal Code and reduce the sentence of imprisonment to the period already undergone he having been in jail for about

eleven months, The appeal is allowed to the extent indicated. The accused is to be set at liberty forthwith.

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