

Jinaram Kachari Vs. the State

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SooperKanoon Citation : sooperkanoon.com/139938

Court : Guwahati

Decided On : Dec-21-1950

Judge : Thadani C.J. and Ram Labhaya, J.

Appellant : Jinaram Kachari

Respondent : The State

Judgement :

Ram Labhaya, J.

1. This is a jail appeal from the order of the Sessions Judge, L, A. D., dated 3-6-1950 by which Jinaram Kachari, appellant, was convicted under Section 460, I. P.C. and under Section 304, Part II, I. P.C., read with Section 34, I. P.C. He was sentenced to undergo E. I. for 3 years under Section 460 and to 4 years R. I. under Section 304 Part II. Both the sentences were to run concurrently.

2. This case was admitted to a hearing on the question of sentence. The charge against the appellant was the two heads. It was as follows:

1. That you, on or about the 5th day of June 1949 at Seoni village under Rangia P. S. jointly with Jathuram Rabha and 2 others committed lurking house breaking by night by cutting Sindhia and entering into the dwelling house of Tomram Deka and that you along with others at the time of committing such offence voluntarily caused death of Tomaram and thereby committed an offence punishable under 3.

460, Penal Code, and within a cognizance of the Court of Sessions.

2. That you, on or about the 5th day of June 1949 at Saoni village under Rangia P, S. committed culpable homicide amounting to murder by causing the death of Tomaram Deka in furtherance of the common intention of yourself and by other and two others and thereby committed an offence punishable under Section 804/34, Penal Code, and within a cognizance of the Court of Sessions.

3. Under the first head; the charge was that the appellant with Jethuram Rabha and 2 others committed lurking house breaking by night by cutting Singhis and entering into the dwelling house of Tomaram Deka and that he along with others at the time of committing this offence voluntarily caused the death of Tomaram Deka. It is clear that according to the charge death of Tomaram was caused by the appellant along with others. This was regarded as a necessary ingredient of Section 460, I. P.C.

4. Under the second bead the accusation against him was that in furtherance of the common intention of all he committed an offence under Section 304 read with Section 81, I. P.C. This is a repetition of one of the ingredients of the first head of the charge. The only question is as to whether, in the circumstances of this case, ft separate conviction under Section 304 read with Section 34, I. P.C., was justifiable. The learned Government Advocate has conceded that it was not. The error in the verdict of the jury is apparently due to a misdirection on a question of law. This also is not disputed.

5 We agree with the learned Government advocate and hold that conviction under Section 304, Part II, read with Section 34, I. P.C., cannot stand. The conviction under this head is quashed and the petitioner is acquitted of the charge under Section 304 part II read with Section 34, I. P.C. His conviction and sentence under Section 460, I. P.C., shall stand. The appeal is allowed to the extent indicated above.

Thadani C.J.--

6. I agree.

