

In Re: Kondepudi Ramam

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Court : Andhra Pradesh

Decided On : Aug-30-1963

Reported in : AIR1964AP350

Judge : Basi Reddy and ;Ananthanarayana Ayyar, JJ.

Acts : Andhra Pradesh (Andhra Area) Children Act, 1920 - Sections 3, 22, 24 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 53A and 302

Appeal No. : Criminal Appeal No. 671 of 1962

Appellant : In Re: Kondepudi Ramam

Advocate for Def. : T. Bali Reddy, Adv. for Public Prosecutor

Advocate for Pet/Ap. : Adavi Rama Rao and ;K.S. Rao, Adv.

Disposition : Appeal dismissed with modification

Judgement :

Ananthanarayana Ayyar, J.

1. In Session Case No. 27 of 1962, the learned Sessions Judge, Rajahmundry convicted the sole accused, Kondepudi Ramam of an offence Under Section 302 I. P. C. and sentenced him to imprisonment for life, He also recorded in his judgment as follows:

'I strongly feel that this is a fit case for recommending to the State Government Under Section 27, Madras Children Act (IV of 1920) for orders of the State Government, is no punishment under the provisions of the Madras Children Act would suffice. The accused shall be Kept in safe custody in the Central Jail at Rajahmundry and the case shall be reported for the orders of the State Government to be passed as required Under Section 27 of the Madras Children Act, 1920'.

Accordingly the accused has continued to be In the Central Jail at Rajahmundry. No orders have been passed so far by the Government Under Section 27 of the Madras Children Act, 1920. But, the accused filed this appeal against his conviction and sentence.

2. This is an unfortunate case of a young student of a school having been fatally stabbed by another student at the threshold of a class room. The prosecution evidence, supported by twenty witnesses, is to the following, effect.

3. Anupoji Varahanarasimhachari (hereinafter referred for convenience as deceased) and the accused were students studying in B Section of Class XI in M. S. L. N. C. M. P. School at Kakinada. They were on cordial terms. As usual, they went to attend the class on 12-4-1952 which was the last day before the beginning of the summer vacation. The deceased was sitting in the 1st third row along with P. W. 2 and other students. The accused was sitting as usual in the fourth row along with P. W. 4, P. W. 10 and other students. The deceased was a strong and well-built young lad of 18 years and was also the leader of the class. In such capacity, he had to maintain discipline among the students at times when not teacher was present in the class. The working hours were from 7 a.m. to 11-15 a.m., divided into five periods with intervals as follows:

1st period 7 a. m. to 7-40 a. in. Interval 7-40 a. n. to 7-45 a. m..2nd period 7-45 a. m. to 8-25 a. m. Interval 8-25 a. m. to 8-30 a. m.3rd period 8-30 a. m. to 9-10 a. m. Interval 9-10 a. m. to 9-25 a. m.4th period 9-25 a. m. to 10-10 a. m. Interval 10-10 a. m. to 10-15 a. m.5th period 10-15 a. m. to 11 a. m.

The deceased was also Secretary of the Red Cross Association in the school and sat in a photograph of persons-connected with that association. That day, he kept on his desk some copies of that photograph in which himself, the Headmaster (P. W. 3) and others were present. In the interval between the first period and the second-period, the deceased went to the dais to maintain discipline among the students. During that short period of his absence from the seat, the accused extracted from the deceased's desk one of the photo copies (M. O. 4). The History teacher duly arrived at 7.45 a.m. and deceased went back to his seat. While the History teacher was teaching history, the accused was busy disfiguring the photograph by applying dots on the fore-heads of some of the students including girls and putting a namam on the forehead of the Headmaster. The History class duly came to an end at 8.25 a.m. and an interval followed.

4. During that interval, the deceased took back the photo (M. O. 4) from the accused and asked the latter why he disfigured the photo. The deceased also said to the accused as follows:--

'You have marked like this on the photo. How would the person who wanted to take the photo pay two rupees and take it?'

The accused retorted angrily that he would pay the two rupees. The deceased replied this time angrily you may give rupees two, but how would the person take the photograph which is disfigured. If you run the management, you would know the difficulty.' There was a hot exchange of abusive words. From words they came to blows. The accused was younger, smaller and weaker. So, in the scuffle, he had the worst of it. Accused fell between a bench and a desk and the deceased fell over him, P. W. 2 managed to separate them with some difficulty. While this quarrel was going on, the interval came to an end and the English teacher (P. W. 7) came to the Class. He heard the accused shouting loudly to the deceased 'shut up'. P. W. 7 resented this and shouted to the accused 'you shut up. You do not talk like that before me.' The accused then told the teacher (P. W. 7) 'why do you abuse me in particular and why not him?' P. W. 7 retorted that it was accused's behaviour which was not good and that he (P. W. 7) knew who was capable of doing mischief. Then the teacher addressed a general reprimand to all the

students saying that they were fools and behaving like animals. Things calmed down and he went on with his class. At the end of the third period, the accused went away to his house which was about one or one half furlongs from the school. He did not turn up at the fourth period which duly began at 9-25 a. m. and was utilised by the Telugu Teacher (P. W. 8) engaging the class.

5. At 10-10 a.m. this fourth period came to an end. The boys including the deceased along with P. W. 1 went to the verandah which was near the stair-case. By that time, the accused had returned from his house to the school. He was sitting on the sill of one of the windows in that same verandah. The interval came to an end and the students went into the class room to assemble for the next class which was to start at about 10-15 a. m. At that time, deceased and P. W. 1 were going hand in hand. The Mathematics Teacher (P. W. 9) came a bit late. On seeing him, the accused got down from the sill and stood respectfully. When the deceased was on the threshold, he suddenly cried out in pain 'baboi'. P. W. 1 turned and saw. Then the accused was pulling a big knife from the back of the deceased. After pulling out the knife, the accused ran away from there. The deceased asked P. W. 1 whether any blood had come out from the back. P. W. 1 had a look and then said that he could not see my blood but he could see only a rent on the shirt but no blood. The deceased pluckily walked up to his desk and sat down there. But he could not sit up in a normal posture. His face sank on the desk. Another student, P. W. 4, who had seen the accused running away with the dagger and the other happenings, shouted out that blood was coming from the wound in the deceased's back. The teacher (P. W. 9) questioned P. W. 4 as to what was the matter. Then P. W. 4 told him that the accused had stabbed the deceased and ran away.

6. P. W. 1 and another student went and reported to the Head Master (P. W. 3) that the accused had stabbed the deceased and ran away. P. W. 3 rushed to the classroom and met the teacher (P. W. 9) on the way. The students laid the deceased gently on the floor of the class-room. The Headmaster (P. W. 3) found the deceased unable to speak. He sent P. W. 6 to fetch the Municipal Doctor. P. W. 6 accordingly went on his cycle. On the way, the accused stopped him a little distance away from the school-gate. P. W. 6 told him that the deceased was

unconscious and the accused then said 'he got what he deserved for having abused me'. P. W. 6 asked the accused why he had felt so excited. The accused replied with a mournful face 'I will keep quiet if anything is said about me. But he abused my mother and, therefore, I stabbed him.' The accused asked P. W. 6 where he was going and the latter said that he was going to fetch the Doctor. The accused said 'All right, bring the Doctor. He will not die. I will be here smoking till you come.' P. W. 6 went to the Municipal Hospital and found that it was closed and that no one was present. He, therefore, returned to the Headmaster. P. W. 3 got a car and sent the deceased in it to the General Hospital. He found in the verandah just outside the class-room one slipper (M. O. 2) which belonged to the accused.

7. When the car reached the Hospital, the Doctor (P. W. 13) i.e., Woman Assistant Surgeon, saw the deceased and found that he was already dead. It was then 11-30 a. m.

8. Meanwhile, the Headmaster had given information to the Head Constable (P. W. 17) about the occurrence. The latter arrived at the school at 1045 a.m. He recorded the complaint (Ext. P. 1) from P. W. 3. The S. I. (P. W. 19) received the report, (Ex. P. 1), prepared F. I. R., registered a crime as Crime No. 70/1962 Under Section 302 I. P. C., and held inquest over the corpse at the Hospital from 1-30 p.m. to 5-30 p.m. Ex. P-17 is the inquest report. He seized the slipper (M. O. 2) and the photograph [M. O. 4) from P. W. 3. He sent the corpse for post-mortem to the General Hospital.

9. The Doctor (P. W. 14) received the corpse and held postmortem. He found a single external injury described by him correctly in the post-mortem certificate (Ex. P-9). It was an incised penetrating injury 2-1/2 c. m. x 1-1/2 c. m. on that left back of the chest 2.5 c. m. later to the 2nd thoracic spine. On dissection, he found that wound had penetrated downwards to a depth of 7 c. m. through the chest wall and pierced the arch of the aorta causing in it a rent of size 1 c. m. x 1 c. m. The left lung was collapsed and the heart was empty. The injury could have been caused by a weapon like M. O. 3 and it had resulted in death. The deceased could have spoken for a short time immediately after being stabbed. The injury was sufficient

in the ordinary course of nature to cause death.

10. The S. I. (P. W. 19) continued the investigation after finishing the inquest. He seized the blood-stained portion of the threshold (M. O. 5) and the blood-stained portion of the floor in the class-room (M. O. 6) under, mahazars, Ex. P-4 and Ex. P-5. He seized under Mahazar (Ex. P-18) another slipper of the accused (M. O. 14) which perfectly matched M. O. 2 and which had been found lying in the school compound. P. W. 19 prepared a plan (Ex. P-20) of the scene of offence and examined P. Ws. 1, 4, 5, 6 and 10 and others.

11. At 10 p.m. the C. I. (P. W. 20) arrested the accused at his house and questioned him. The latter gave a voluntary statement (Ex. P-19) as follows:--

'I put the dagger in the sheath which was at the house and concealed it in a closed place in the firewood placed on a baddi (elevated construction) with sticks in the shad in the back-yard of my house.'

In pursuance of that statement, the accused produced before the C. I. (P. W. 20), the dagger (M. O. 3) which was covered by the sheath [M. O. 10) from out of a pile of fire-wood. Accused also pointed out a fire place where some charged ashes were found and the C. I. seized them (M. O. 11).

12. Subsequently, the j. S. C. M. Kakinada (P. W. 12) recorded a voluntary statement of the accused after administering to him the necessary warnings and observing the necessary precautions. That statement is Ex. P-7. In that statement, the accused gave a long story in which he mentioned about what happened to the photograph and about the quarrel and continued as follows;

'(a) By that time, it was 9-30 a.m. and the long bell was again rung. Then I went home to bring the paper of progress report which the master told about previously. After going home, I got my father sign on the progress paper, held that one card with one hand and took out the dagger in the almyrah and the agony of what I should do to him for his having abused ma and also beaten me had become rooted in my heart. I did not feel sorry for his having beaten me but the abusive words he uttered against my parents and the words used in heckling me by all

students in the class were ringing greatly in my ears.What I thought was 'shall I first frighten him or shall I stab him, for having uttered me such words'. With the very hope that it would, however, be better If I first frighten him, I came to the school holding the progress card in the left hand and holding the dagger in the right hand and concealing the right hand underneath my shirt. . . .When he (deceased) was about to enter the class-room bywalking through the open space in between me and the Master, I thought that was the proper time to expiate him somehow or other without fail for the words he uttered against me. In the meanwhile, I felt somewhat agitated in my mind and I thought 'why should I do like this? If I do like this it will be regarded as a very high crime and therefore I frighten him by showing the dagger. But if I frighten him by showing the dagger, he is capable of beating me black and blue While meditatingso, some trouble broke out in my mind and I knew only myself taking out the dagger from underneath the shirt being unable to understand what I should do.

(b) I do not know what happened thereafter. I be-came unconscious. I could see nothing. Nothing was visible to me,

(c) In the meanwhile, I felt fear and while attempting to run away from the upstairs, my leg itself struck against me. I stumbled and I fell rolling down to a half distance from the upstairs. Then I rose up and went home. Having gone to the school gate I looked back with fear that he (deceased) might be coming behind to beat me. When I turned back and saw, nobody was coming. I decided, 'Alright, he is not coming' and came home.....In the meantime, police and all our school students gathered round my house. The two police-men came and brought me to the Police station. Thereafter the person named M. Adinarayana (P. W. 6) met me while police people were bringing me and asked me why I became so excited. I replied that I, being unable to bear the words uttered against me acted in that manner, and it happened thus ;

(d) When I enquired a little (later) about him, I came to know that he received a knife stab and blood was oozing, and that some persons went to the Doctor. Thereafter police brought me and put me in the lock-up. I never thought that I would become so excited, that I would do what should not have been done and that

blood would flow from his body. I thought all these in mind and felt great repentance. At no time I thought that it would happen like this. I repented immensely for having done like this in a fit of excitement due to the abusive words used against me. Excepting this, I have nothing more to state.'

Though the statement reads continuously, we have for purposes of convenience in discussion split it into four portions.

13. The police duly filed charge-sheet after closing the investigation. On analysis, M. O. 3 was found to be stained with human blood.

14. In the committing Court, accused gave statement (Ex. P-21) completely denying all knowledge of the offence and stated that the evidence of P. Ws. 1, 2 and other witnesses was false,

15. In the Sessions Court also, he made statement to the same effect. As regards the quarrel, the accused stated as follows:--

'He (deceased) abused me, my father and mother in a very filthy language. He uttered highly indecent words like 'your mother is a whore. Had you been born to one father you would not have done like this. Your mother and wife.....I did not abuse him (deceased).

When questioned regarding the statement (Ex. P-7) recorded by the Magistrate, the accused stated as follows:

'Circle Inspector, Sub-Inspector and the Head-Constable, Gangaraju gave me papers and made me read. They beat me. They made me say like that by compulsion telling that if I did not say like that they would completely ruin my entire family.'

Accused denied having made the statement to the Police and having produced the article (M. O. 3). He also said that, after the interval which followed the third period, he did not go to the school at all.

16. The accused did not examine any defence witnesses at all.

17. The learned Sessions Judge held that the evidence of the witnesses was believable and that the evidence apart from Ex. P-7 clearly proved that the accused had fatally stabbed the deceased and that the act of stabbing constituted murder. Regarding Ex. P-7, he observed as follows :

'I have perused Ex. P-7 very carefully. My conclusion is that it is not a confession for the simple reason that the accused did not categorically say that he had stabbed the deceased and committed the crime in question. As regards the other circumstances recorded in Ex. P-7 which are said to have been the motive portion for the incident of stabbing, it is well established that these cannot be dissociated and therefore cannot be acted upon in a Court of law.'

Beyond doubt or dispute, the deceased was fatally stabbed by a knife. The injury was obviously fatal having pierced through the lung and collapsed it and torn the aorta. Deceased was a strong and well-built boy with a very good sense of discipline and high will power. That is why even when he had been given such a terrible stab, he calmly walked to his seat and sat down there and calmly asked P.W. 1 as to whether any blood was coming from his back. He did not raise any alarm or make a big fuss. He simply sank down and met his death.

18. The evidence connecting the accused with the crime consists of the following items:

(1) Evidence of witnesses who saw the incident and also heard what was going on namely, P.Ws. 1, 2, 4, 7, 9 and 10. None of them actually saw the accused plunging the dagger into the body of the deceased. But, P.W. 1 saw the accused pulling out the dagger from the wound of the deceased. For convenience, we shall refer to these witnesses as eye-witnesses.

(2) Confession by the accused to P.W. 6.

(3) The Statement (Ex. P-19) made by the accused to the Police and his production of M.O. 3.

(4) The statement (Ex. P-7) which had been given by the accused to the Magistrate.

19. Item No. (1): The entire occurrence including the disfiguring of the photograph (M.O. 4) by the accused and the quarrel is spoken to by P.Ws. 1, 2, 4, 6, 7, 9 and 10. They consist of students and teachers. Certain suggestions were made to them in cross-examination but they were denied by those witnesses. Evert these suggestions were not of such serious nature as to affect the veracity or reliability of these witnesses who had absolutely no ill-feeling against the accused and no motive to depose falsely against him or to falsely implicate him in the case. The learned Sessions Judge, who saw these witnesses deposing in the witness box, has stated that he felt much impressed by the demeanour of these teachers and students. He has observed as follows;

'None of these teachers or students gave me any impression that they were weaving a story. Their evidence was straightforward and impressive.'

In fact, accused himself had no enmity towards the deceased prior to the day of occurrence. What prompted the accused to do the act was great excitement and deep resentment over what the deceased had said and done in the course of the quarrel. We have gone through the evidence and we find no reason to disagree with the finding of the learned Sessions Judge that these witnesses are reliable.

20. Of these, P.W. 1 and P.W. 2 saw the accused sitting on the window sill at the verandah. When the deceased raised an alarm, his arm was linked to P.W. 1 and the latter turned and saw the accused pulling the dagger out of the wound in the deceased's back. The accused was then running away from the spot by P.Ws- 1, 2 and others. Just outside the school, P.Ws. 5 and 6 also saw the accused running away from the school. P.W. 1 has stated as follows:

'When 1 saw accused drawing out the dagger from the back of the deceased, I got the impression that the deceased received stab injury.'

The impression gathered by P.W. 1 at that time from the circumstances was that the accused had stabbed the deceased for he reported to P.W.3 that accused had stabbed the deceased. P.W. 4 had the same impression. He told the Master (P.W. 9) that the accused had stabbed the deceased and run away. The evidence of those witnesses by itself shows that the accused had stabbed the deceased.

21. Item No. 2 : P.W. 6 has deposed to the accused confessing before him about the stabbing. This witness was a student like the accused and the deceased and has no motive to depose falsely against the accused. The learned Sessions Judge, who observed the demeanour of P.W. 6. has stated in his judgment as follows:

'P.W. 6 impressed me that he was telling the truth. I am inclined to accent his evidence that the accused confessed to him that he had stabbed the deceased.'

We see no reason to disbelieve P.W, 6. This is also strong evidence against the accused.

22. Item No. 3 : It is clearly proved that the accused made the statement (Ex. P. 19) and produced M.O. 3. The evidence shows that this dagger could have caused the injury. It is a powerful knife with a straight blade about 9' long and handle 4' long which is capable of causing fatal injury. Analysis prove, that it was stained with human blood. This evidence also strongly corroborates the evidence of the witnesses coming under items 1 and 2. We see no reason to doubt the evidence of P.W. 20 and the Panchayatdar (P.W. 18) who was the Karnarm.

23. Item No. 4: In the Committing Court and In the trial Court, accused had alleged that he had been coerced by the police to give the statement (Ex. P 7). But the Magistrate (P.W. 12), who recorded the statement, observed all the necessary precautions and gave ample time to the accused to think for himself and was convinced that the accused gave the statement voluntarily. We see no reason to doubt, the fact that the accused gave statement voluntarily. In portion (c), the accused has mention-ed about making statement to P.W. 6. Though the teemed does not say therein specifically or categorically that ha stabbed, when read along with the next portion (d) and the fact that P.W. 6 was questioning the accused after having seen the deceased lying stabbed, it would be reasonable to infer that what the accused mentions in portion (c) as what he had done was certainly the act which caused the blood to come out of the body. The only act winch accused could have done so as to cause blood to come out of deceased's body was stabbing of deceased with knife and nothing else. Though the accused says in Ex. P-7, that when P.W. 6 Questioned him, be (accused) was in custody of the Police,

the evidence of P.W. 6 shows that the confession of the accused was made long before the accused was arrested and soon after the occurrence. We see no reason to disbelieve P.W. 6. In portion (a) accused has stated that he picked up the dagger, debated within himself as to whether to stab or frighten but in any case was determined to use the dagger for either purpose and accordingly went to the school with that dagger gripped in his right hand and concealed under his shirt and was present in the verandah when deceased was going into the class-room. In portion (c), he says, that he ran away from the spot which obviously was after the deceased got stabbed. So, in effect, In portion (a) accused admits having taken a dagger with a view to use it against the deceased, whether to frighten or to stab, and was present at the spot until he went away after the deceased was stabbed. Between the two periods, deceased was stabbed. That period is covered by portion (a) in which he says that he did not know what happened and that he became unconscious and nothing was visible to him. If accused wanted to say that he stabbed, portion (b) is the place where he would have and could have stated. He did not say that he stabbed the deceased.

Thus, on a reading of the entire statement (Ex. P-7) we find that the evidence of the prosecution is corroborated to a great extent by Ex. P-7 except to the extent of accused saying specifically that he stabbed etc. Various passages in the statement (Ex. P-7) show that it contains an implied though not express admission that he stabbed or must have stabbed the deceased. In any case, even apart from Ex. P-7, the other evidence in the case is ample to prove that the accused committed the offence. We agree with the learned Sessions Judge that the accused stabbed the deceased and caused the fatal injury which resulted in the death of the accused.

24. It would appear that accused represented at various stages that he had started the deceased because the deceased had abused the accused's parents in very indecent language and that the accused was unable to bear that language. But the accused did not commit the stabbing immediately on grave and sudden provocation. He went home, picked up a knife and thought within himself for a considerable time (about an hour). Therefore, the offence committed is certainly murder.

25. P.W. 3 has produced the certificate (Ex. 0-2) granted by him to the father of the accused regarding the date of birth of the accused. This is proved by the clerk (C.W. 1) of the school. It shows that the accused was born on 4-10-46. It means that, on the date of the conviction (21-8-62), he had not completed the age of 16 years. On the date of the occurrence also, he was below the age of 16 years. So, he is a young person and youthful offender as defined in Section 3 of the Andhra Pradesh (Andhra Area) Children Act. The Doctor (P.W. 14) also has mentioned that the accused would have completed 15 years and not 16 years.

The learned Sessions Judge considered the question of sentence in paras 15 and 16 of his judgment. He has stated therein as follows:

'It is in the evidence of P.W. 2 and P.W. 4 the classmates of both the accused and the deceased, that there was an exchange of hot words between the accused and the deceased. According to the accused, the deceased used abusive language referring to his mother as a whore and referring to him as one who was not born to one father. What the accused stated was plausible, especially since P.W. 2 and P.W. 4 expressed their inability to remember the abusive words used in the altercation. The accused must have been smarting. Even according to P.W. 6, the accused was said to have told him that he could bear if he was abused but that he could not tolerate if his mother was abused. Taking these circumstances into consideration, and the age of the accused, the maximum penalty of death is not required to be imposed. The accused is less than 16 years of age. But the offence shows the unruliness and depravity of, his character and if he is sent to the senior certified school, it would not be sufficient or suitable punishment. I, therefore, sentence the accused to imprisonment for life.

But the accused as has already been stated, is between 15 and 15 years of age. He could only be described as a misguided boy.' If he is to undergo 'imprisonment' for life along with other criminals, it would be depriving him of an opportunity for reform. On the other hand, 'it might worsen his character'.

Considering the age of the boy and also the circumstances leading to his determination to stab the deceased which was only one stab, the learned Sessions Judge made the recommendation which we have extracted earlier in this

judgment. In effect, the learned Sessions Judge felt that the boy was unruly and showed depravity of character but, at the same time, observed that he was a misguided boy and that imprisonment was not the proper course to be adopted and that, on the other hand, some other forms of punishment had to be given which would reform him without Keeping him in jail.

26. Shri Adavi Rama Rao, the learned counsel for the appellant, contends that the sentence of imprisonment for life given by the learned Sessions Judge is not valid in law. Originally, sentence of transportation means being sent to overseas as a convict. The authors of the Indian Penal Code observed as follows (at page 86).

'Prolonged imprisonment may be more painful in the actual endurance; but it is not so much dreaded before hand; nor does a sentence of imprisonment strike either the offender or the by-standers with so much horror as a sentence of exile beyond what they call the Black Water (Kala Pani). This feeling we believe, arises chiefly from the mystery which overhangs the fate of the transported convict.'

Thus, transportation basically differed from imprisonment in the fact of the convict being exiled and made to undergo the period of sentence in a place to which he was transported over the dark waters of the deep sea. The authors of the Code themselves observed as follows: (Page 94) (Law of Crimes by Ratnalal 1940 Edition):

'It seems to us also very desirable that the Government should have the power of commuting perpetual transportation for perpetual imprisonment

Subsequently, in the Prisoners Act (Central Act III of 1900), Section 32 was introduced as follows:

'Section 32(1). The State Government may appoint places within the State to which persons under sentence of transportation shall be sent and the State Government, or some officer duly authorised in this behalf by the State Government, shall give orders for the removal of such persons to the places so appointed

Under this section, the Government issued Notification appointing Central Jails at Rajahmundry, Vellore, Salem, Trichinopoly, Coimbatore, Cannanore and some District Jails within the State as places to which prisoners sentenced to transportation could be sent. The basic characteristic of transportation namely, being exiled from the State to some other place separated by the sea ceased to exist, and the sentence of transportation, whether for life or for a specified period, in practice and execution became imprisonment for life or for a specified period in any of the Jails specified in the Notification issued Under Section 32 of the Prisoners' Act.

27. Originally, before amendment by Central Act 25 of 1955, Under Section 53, 1. P. C. the second category of punishment was 'transportation'. At that time (before the amendment), sentence of transportation for life existed and was provided in Section 302, I. P. C. and other sections. But, there was no mention in Section 53, I. P. C. of the sentence of transportation for life as a category by itself and as distinct from the term 'transportation'. The position was that 'transportation for life' was only a sentence coming under the general category of transportation, in which the period was fixed as the unexpired portion of the life of the person who was sentenced.

The difference between 'transportation for life' and transportation for any other particular period was only a difference in period and not a difference between two categories of punishment as defined in law. At that time i.e., before amendment by Central Act 26 of 1955, the only category of punishment regarding imprisonment was the fourth item which was imprisonment of two different types, rigorous and simple. There was no provision of 'imprisonment for life' specifically as a punishment in any section of the Indian Penal Code, though, by operation of Section 32 of the Prisoners' Act with notifications made under it, transportation for life was given effect to as Imprisonment for life in the notified Jails.

28. The fourth item in Section 53, I. P. C. has continued to be in existence unaffected by the Amending Act 25 of 1955. But, by Section 317(1) of that Act, amendment was carried out in the second item of Section 53, I. P. C. substituting for the word 'transportation' by the words 'imprisonment for life'. The result is that

in Section 53, I. P. C., the second item is 'imprisonment for life' and it exists side by side with the fourth item which is 'imprisonment'. By the Amending Act, Section 53A I. P.C. was added as a new Section.

29. Alter the amendment, the result is as follows: Transportation' as a sentence has disappeared from existence as a punishment. In the laws other than the Penal Code, wherever transportation for life was originally mentioned now the words 'imprisonment for life' exist and wherever sentence of transportation for a period other than life was provided for being awarded, it has ceased to exist.

Section 22 of the Andhra Pradesh (Andhra Area) Children Act runs as follows :

'Notwithstanding anything to the contrary contained in any law no child or young person shall be sentenced to death, transportation or imprisonment or committed to prison in default of payment of a fine or in default of furnishing security.

Provided that a young person may be sentenced to imprisonment or committed to prison as aforesaid where the Court certifies that he is so unruly or so depraved a character that he is not a fit person to be sent to senior approved school and that none of the other methods, in which the case may be legally be dealt with, is suitable.'

Section 53A, I.P.C. has to be given effect to in Section 22 of the Children Act. In the body of the Section, the word 'transportation', as already seen from the above discussion, is a category of punishment which could mean either transportation for life or any other period, in so far as it was for any period other than life, in view of Section 53A, I. P. C., that has ceased to be in force. In so far as it was transportation for life, it has now to be read as 'imprisonment for life'. The result is that in place of the word 'transportation' in Section 22 the words 'imprisonment for life' have to be read in effect. So, the body of Section 22 as read with Section 53, I. P. C., runs as follows:

'..... no child or young person shall be sentenced to death or imprisonment for life or imprisonment

30. So far as the proviso is concerned, before the Act 26 of 1955, it mentioned only 'imprisonment'. It continues to stand as it was, unchanged by Section 53A, 1. P. C. The proviso did not and does not contain the words 'death' and 'transportation'. Obviously, the framers of the Children Act did not want to bring within the scope of the proviso the sentence of transportation whether it be for life or for any other period.

31. The question is whether the word 'imprisonment' in the proviso would cover this term 'imprisonment or life' also. As we have already pointed out, Under Section 53 I. P. C. as it existed before the amendment, a punishment of 'imprisonment for life' is a category by itself distinct from the category of imprisonment and is not a sub-category. The word 'imprisonment' in the fourth item of Section 53, I.P.C, is not a general category which includes punishment of imprisonment for life as sub-category in which the term was fixed as the unexpired portion of the prisoner's life. This is also clear from the fact that in Section 22 of the Children Act itself, the words 'imprisonment for life' (as substituted for the word 'transportation' in view of Section 53A I. P. C.) occur in the body of the section side by side with the word 'imprisonment' which also occurs in the proviso. This position of law is also clear from the provisions of the Borstal Schools Act where S. 5 provides for a Court having jurisdiction to pass a sentence of detention in lieu of passing a sentence of imprisonment whereas Section 10-A of that Act provides as to what can be done in case of a person who has been awarded a sentence of 'imprisonment for life', as a result of giving effect to the words of Section 53A, I. P. C. in the original wording of Section 10-A of the Act. Therefore, it is clear that under the proviso to Section 22 of the Children Act, a young person may be sentenced only to imprisonment and not to imprisonment for life. We agree with the contention of Shri Rama Rao that the award of sentence of imprisonment for life by the learned Sessions Judge in this case is not valid in law, and, therefore, it is liable to be set aside.

32. Section 23 (1) of the Children Act provides that in addition to or in lieu of sentencing a young person according to law to any other punishment, the Court may order that he may be sent to a Senior Certified School. Section 24 of the same Act provides that the period of detention shall not be less than two and not

more than five years and should not, in any case, extend beyond the period when the youthful offender would attain the age of eighteen years. If Section 24 were to be applied, the maximum period to which he can be sent for detention in a Senior Certified School will be the period of two years and odd upto his completing the age of eighteen years on 3-10-1964. In Section 28, the various modes of dealing with a young person are provided. Action Under Section 24 is one of those modes. Section 27, under which the learned Sessions Judge considers action to be desirable, provides as follows :

'Section. 27 (1). When a child or young person is convicted of an offence of so serious a nature that the Court is of opinion that no punishment which under the provisions of this Act it is authorised to inflict is sufficient, the Court shall order the offender to be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the State Government.

(2) Notwithstanding the provisions of Section 22, the State Government may order any such child or young person to be detained in such place and on such conditions as it thinks fit, and while so detained the child or young person shall be deemed to be in legal custody.

Provided that no period of detention so ordered shall exceed the maximum period of imprisonment to which the child or young person could have been sentenced for the offence committed.'

We have already extracted the portion of the judgment of the learned Sessions Judge wherein he has given reason for holding that no punishment under the provisions of this Act which the Court was authorised to inflict was sufficient. The learned Sessions Judge has himself concluded from the evidence that what the accused stated was 'plausible namely, that, in the course of the sudden heated quarrel and exchange of abuses, the deceased referred to the accused's mother as a whore and also referred to the accused as not a person born to one father. We do not find sufficient reason to disagree with the findings of the learned Sessions Judge. He has held that the offence showed unruliness and depravity but, at the same time, he has observed that the accused could only be described as misguided boy and that if he were to undergo imprisonment for life, it would be

depriving him of an opportunity for reform. What he means is that the proper way of dealing with the boy is to choose a course which will give him an opportunity for reform and also put him under discipline and cure him of his unruliness.

33. The occurrence arose out of an unfortunate incident in which the accused and the deceased who were good friends suddenly had a quarrel without any previous enmity or long-standing grudge. Two reasons seem to have prompted the accused to commit this offence.

(1) He was smarting under the insult made, to his mother.

(2) He was smarting at having had the worst of it in the fight with the deceased---accused refers to his having been pinned down as a mouse.

34. So far as the first reason is concerned, the accused's being very much emotionally upset and excited is not surprising nor is to be condemned wholesale. It is even laudable to some extent that a boy should feel very great mental pain when the honour of his mother was insulted. If he had taken to some moderate and mild action in the heat of the moment to vindicate the honour of his mother (and not gone too far) things might have been different. But, the accused did not try to merely vindicate his mother's honour. He acted vindictively to an unjustifiable extent and that too, after cool deliberation and after choosing a deadly weapon. But, all the same, it cannot be said that his action amounted to depravity in the sense of a corrupt state of moral character. The offence did not involve moral turpitude in the sense of the accused trying to get undue gain to himself materially.

35. As regards the second reason, the accused cannot be said to have acted properly. It was he who started the trouble, When he just picked up the photo copy and put some ink dots in it, it was just a boyish mischief (using the term not strictly in the sense of the definition of the word in the Penal Code). But, when the deceased rightly protested, the accused did not admit his fault or express sorrow. On the other hand, he himself picked up a quarrel with the deceased knowing full well that the deceased was an older and stronger boy. When the accused had the worst of such a fight, accused had to thank himself for it. He had no right to feel aggrieved about it to such an extent as to go home and bring 3 deadly weapon

and stab the deceased in the back.

Obviously the deceased was a boy of strength, stamina and self-control. Accused seems to have been not so well-disciplined. While the class was going on, (sic) chose to spend the time disfiguring the photograph. When deceased protested, he had a fight with him in the class and, within the hearing of the school teacher (who had meanwhile come) accused shouted to the deceased to shut up. When the teacher asked the accused to shut up, accused retorted back. So, the accused did not have much of discipline and self-control. But, all the same, it cannot be said that he is so unruly as to be incorrigible because it is in evidence that when he was sitting on the window sill with the dagger gripped in his right hand and concealed within his shirt, the Mathematics teacher came and then he stood up in respect. ' In his statement also, he has said that he has felt immensely repentant about what has happened. We agree with the learned Sessions Judge that there is a good hope of his being reformed if he is subjected to a term of strict discipline and control. Considering all these circumstances, we consider that a term of detention in the Senior Certified School would do him a lot of good by way of reformatory and also would be sufficient to meet the ends of justice, There is no need to take action Under Sec, 27 of the Children Act.

36. In the result, we confirm the conviction of the appellant Under Section 302, I. P. C. We set aside the sentence of imprisonment for life and Under Section 23 of the Children Act in lieu of sentencing him to any other punishment, we order that he be sent to a Senior Certified School for a period upto 3-10-1964. The period from the time of the conviction upto 3-10-1964 will be treated as the period of detention in a Certified School though he has already been in jail from the date of the conviction. With this modification, the appeal is dismissed.

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