Raghubir Vs. State

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Court : Allahabad

Decided On : Jul-31-1956

Reported in : AIR1957All132; 1957CriLJ336

Judge : Chowdhry, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 304 and 325

Appeal No. : Criminal Appeal No. 1409 of 1953

Appellant : Raghubir

Respondent : State

Advocate for Def. : Shri Rama, Deputy Govt. Adv.

Advocate for Pet/Ap. : Sheo Charan Lal and ;Jagdish Sahai, Advs.

Disposition : Appeal partly allowed

Judgement :

Chowdhry, J.

1. This is an appeal by one Raghubir who has been awarded five years' R. I. and Rs. 200/- fine under Section 304, I. P. C by a learned Sessions Judge of Aligarh for having caused the death of Mangali infant daughter of one Chhidda at the house of Chhida in village Harji Garhi, P. S. Tap-pal, District Aligarh, at 10 a.m. on

19-4-1953. Half the amount of the fine: if realised, has been directed to be paid to Chhidda by way of compensation.

2. It is common ground that the child met its death as a result of an incident that took place atthe aforesaid time and place. The defence version that the child was killed because it was thrown to the ground by its mother Govindi P. W. 2 was disbelieved by the trial Court, and quite rightly so. There Was no evidence in support of that version, and the post-mortem disclosed that the child died of a lathi injury inflicted on the left side of the head.

3. The finding of the trial Court that the child died as the result of a blow from the lathi of the appellant was based on the unrebutted testimony of a number of prosecution witnesses of unimpeachable character. That evidence finds support, as shown already, from medical evidence. The only question for determination, and the one which was seriously argued by the learned counsel for the appellant, was as to what the offence made out against the appellant was

4. It appears that the appellant went armed with a lathi to the house of Chhidda and there was an exchange of hot words between the two. The appellant raised his lathi to strike at Chhidda but Chhida's wife, who was holding her infant daughter Mangali in her lap, intervened so that the lathi blow aimed at Chhidda struck Mangali and caused the child to die instantaneously.

In these circumstances, there is no doubt that the appellant neither intended to kill Mangali nor did he know himself to be likely to cause the death of the child. That being so, the case fell within the four corners of illustration (c) to Section 299, I. P. C. In other words, whatever other unlawful act he did, it could not be said that the appellant had committed the offence of culpable homicide.

It may be stated here in passing that the view of the learned Sessions Judge that the accused should have stopped immediately when the child's mother intervened is quite' untenable. It is a conclusion which is on the face of it a farfetched one since, on account of the unexpected intervention of the child's mother, it was not possible for the appellant to prevent the blow aimed at Chhidda from striking the child.

5. The main controversy in this case ranged round the question as to whether the offence committed by the appellant was one punishable under Section 323. I. P. C., as urged by the learned counsel for the appellant, or one punishable under Section 325, I. P. C. as submitted by the learned counsel appearing for the State. Its determination depends necessarily on the answer to the question: What degree of injury should the appellant be deemed, in the circumstances of the case, to have intended, or to have known himself to be likely, to inflict on Chhidda as a result of the blow he aimed at him? That would naturally depend on the weapon used, the force with which it was wielded and the somatic features of the person who was to be the target of the blow.

6. Now, it appears from the medical evidence that the child Mangali was two and a half years old. The nature of the injury sustained by the child has been described as follows in the post-mortem report:--

1. Traumatic swelling in an area 4' x 3' with ecchymosis underneath on the left side of head 1' above the left ear.

2. On reflection of the scalp a friadiatic fracture underneath injury No. I was discovered, one limb of this fracture extending forward for 3', another for a distance of 2-1/2' and the third for a distance of 3-1/2'.

One piece of the occipital bone was found depressed, the brain and the membranes of the brain were congested and the base of the skull was fractured in the middle fossa on the left side. Death, in the opinion of the doctor, was due to coma due to fracture of skull.

7. It is further in evidence that the weapon used by the appellant was a lathi, and that Chhidda, the person aimed at, was 50 years of age. It has also come in evidence that the lathi was wielded with such force that the child was thrown down to the ground from the lap of its mother.

Regard being bad to these data cumulatively, the only reasonable inference to draw should be that had the blow struck Chhidda, the person at whom it was aimed, it would in all probability have caused grievous hurt. The offence for which

the appellant should therefore have been convicted was one punishable under Section 325, and not under Section 304, I. P. C.

8. The learned counsel for the appellant cited a Bombay case reported as Chatur Nath v. Emperor, 21 Cri LJ 85 : (AIR 1920 Bom 224) (A) where in somewhat similar circumstances it was held that the accused was guilty of the offence of causing simple hurt. That case is however distinguishable inasmuch as the weapon used there was a stick of unknown size and nature, the person hit was described as a baby and was therefore apparently much younger, there is no description of the injuries sustained by it and there is also nothing to show as to what the age or other physical characteristics of the adult aimed at were. The inference In each case must necessarily depend on the facts and circumstances peculiar to it.

9. The aforesaid alteration in the nature of the offence however only creates a distinction without a difference in the ultimate result of the case since there seems to be no justifiable reason to reduce the sentence of five years' R. I. imposed upon the appellant. In this connection the circumstances that are to be borne in mind are that the appellant behaved in a most aggressive manner in having gone to the house of Chhidda armed with a lathi in order to chastise him for his having refused to work for him, and that the appellant had given a beating to Chhidda a day previously also on his having made a similar refusal. The appellant appears to have been possessed by the atavistic tyranny complex of the Zamindar against the riaya.

10. In the result, therefore, while the appeal isallowed to this extent that the conviction of the appellant is altered from one under Section 304 into oneunder Section 325, I. P. C., it is dismissed so far as thesentence of five years' R. I. and Rs, 200/- fine, orsix months' further R. I. in default of payment offine, is concerned. The directions to payment ofcompensation to Chhidda is also maintained. Theappellant, who is on bail, shall surrender and serveout the sentence imposed upon him; his bail bondsare cancelled.