

Joseph Cheriyan Vs. State

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Court : Kerala

Decided On : Jul-28-1952

Reported in : 1953CriLJ706

Judge : Koshi, C.J. and; Gangadhara Menon, J.

Appellant : Joseph Cheriyan

Respondent : State

Judgement :

Koshi, C.J.

1.This appeal is against a conviction and sentence for causing grievous hurt. The appellant took his trial before the learned Sessions Judge of Kottayam for an alleged commission of the offence of murder. The prosecution case was that the appellant caused the death of one Sukumaran, an employee under him, by fisting him with his hand in the region of the abdomen. The learned Judge found that while the fisting was true, the medical opinion as to the cause of death was so indefinite and uncertain that it would be unsafe to fasten criminal responsibility for murder on the appellant. The learned Judge however held that the appellant's act amounted to causing grievous hurt punishable under Section 325, I.P.C., and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/-. On default to pay the fine the appellant is to undergo rigorous imprisonment for a further period of six months. Out of the fine if realized

an amount of Rs. 500/- is directed to be paid to the widow and children of the deceased Sukumaran as compensation. The appeal is against the said conviction and sentence.

2-3. (His Lordship, after quoting paras. 2 and 3 of the judgment of the Sessions Court which contained the facts of the case and the defence case, proceeded). Before referring to the evidence as to the occurrence we may state the medical evidence in the case consisted of the testimony of P. Ws. 9, 14 and the expert opinion given by the Medical Superintendent of the Trivandrum General Hospital after a study of the relevant documents. P. W.9 was then the Assistant Surgeon of the Kanjirappally Government Hospital and he conducted the autopsy. P. W.14, District Medical Officer, Kottayam was present at that time. As indicated earlier, medical opinion gave no certain guide as to the cause of death. While death as the result of violence is not ruled out by that evidence it showed that cyanide poison might as well have been the cause. The learned Judge therefore rightly held that the person who caused violence could not be held to be liable for anything more than causing hurt. The question as to whether that hurt was one which could be designated as 'grievous' naturally came up for discussion by the Judge after fixing the offender. The doubt as to the cause of death was caused by the presence of traces of cyanide in the stomach contents detected by the chemical examiner. As to how those traces happened to be present is a mystery to all those who had anything to do with the case and it will be futile to attempt to unravel it.

4. What we have to decide here is whether the prosecution has proved beyond doubt that the appellant fisted the deceased Sukumaran in his abdominal region as alleged and if so what offence that would constitute. (His Lordship after examining the evidence held that the accused caused hurt to the deceased in the manner alleged by the prosecution and proceeded).

5. The next question is whether the hurt inflicted falls under Section 321 or under Section 322. In a sense, the question is only of academic value. The learned Judge while finding that the accused inflicted grievous hurt on the deceased has awarded only a sentence which he could have legitimately passed in respect of a conviction under Section 323, I.P.C., for voluntarily causing hurt. No doubt the

maximum punishment prescribed for that offence has been passed against the appellant.

6. In order to determine whether the hurt caused is grievous, the extent of the hurt and the intention of the offender have to be taken into account. According to the prosecution and the learned Judge, the physical requirement was satisfied as the hurt was one which endangered life (8th clause to Section 320, I.P.C.). The mental element is a matter of inference from proved facts and circumstances. The learned Judge has relied upon the observation in - 'Narayan Pasi In re', 24 WR 24(1) (Cr) for his conclusion that the hurt caused by the appellant was such as could be designated as grievous. That decision states that wherever a violent blow is inflicted upon the body it would be wrong to say that there was absolutely nothing to show that the party intended a grievous hurt. The explanation to Section 322 so far relevant states that a person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself, to be likely to cause grievous hurt. The learned Judge has approached the question from the correct view point but the decision of the question is by no means easy. However we cannot say that the Judge was wrong in thinking that the medical evidence satisfied the physical requirement of a hurt endangering life. If the hurt was not so serious as to endanger life doubt as to the cause of death could not arise and would not have arisen. Nor are we, regard being had to the part of the body chosen for inflicting violence and the severe internal injuries that violence left behind, prepared to say that the learned Judge's opinion that the mental requirement has also been satisfied is not right. The requirement of the explanation will be satisfied if the offender had the knowledge that by his act he was likely to cause grievous hurt. We find it difficult to accede to the argument that the appellant who caused such violence to the deceased as to leave the internal injuries noticed in the post-mortem certificate could not have had such knowledge. In any view we are unable to say that the Judge's decision on the point is wrong and that would suffice for our present purpose, for, even if he were wrong the punishment awarded is one that could have been awarded for an offence under Section 323. Assuming that the offence is one that would only fall under Section 323 we cannot agree that a master who took law into his own hands and used such violence to the person 61 his servant as to cause the injuries noticed in the

post-mortem certificate should be let off with a mere fine. At the same time, we must state that even when the argument concluded we felt there was no justification to enhance the sentence as applied for by the State in Criminal Revision Petition No. 7 of 1952 and we then and there dismissed it. The sentence awarded is by no means severe.

7. The appeal fails and it is dismissed.

8. There is absolutely no ground to grant leave for appeal as asked for and we dismiss the Drayer.

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