

Urmese Vs. State of Kerala

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Court : Kerala

Decided On : Aug-12-1959

Reported in : AIR1960Ker197

Judge : T.K. Joseph, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 3d4, 304 and 323

Appeal No. : Criminal Appeal No. 89 of 1959

Appellant : Urmese

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C.M. Cheru, Adv.

Judgement :

T.K. Joseph, J.

1. The appellant stands convicted under section 304 part 2 of the I.P.C. The case for the prosecution was that, following a quarrel between his children and the son of the deceased, the latter abused the accused's wife and on her reporting the same to the accused, he dealt one blow with his hand to the deceased, while he was returning from the market, and that the latter died a few hours later. Though

the charge against the accused was one under section 302, the learned Judge found that the offence proved was only culpable homicide not amounting to murder. He was sentenced to rigorous imprisonment for two years.

2. The fact that deceased Kuttan died as a result of injuries sustained was not disputed. This is satisfactorily proved by the post-mortem certificate Ext. P6, the inquest report, Ext. P. 8, and the evidence of Pw. 1, Pw. 6, Pw. 20 and Pw. 21. According to medical evidence, the cause of death was fracture of the vertebrae. The 1st and 2nd cervical vertebrae were broken and Kuttan died as a result of injury to vital organs, haemorrhage and coma.

3. Coming to the question as to who inflicted the injury on Kuttan, there is clear evidence that the accused beat him with his hand on his neck and that Kuttan fell down unconscious on receiving the blow. This fact is proved by the evidence of Pws. 2, 3 and 7. In fact, the accused did not deny that he gave a blow to the accused which caused him to fall clown unconscious. The previous incidents such as the quarrel between the accused's children and Pw. 11, the son of Kuttan, and the latter abusing the accused's wife were also not denied.' A suggestion was put forward by the defence that the injury which caused death might have been caused by Kuttan falling on the road. Pw. 8 deposed that the injury could have been caused in the manner stated by the prosecution and that it was more probable that it was due to the blow than to the fall. It may be mentioned the Kuttan had no external injuries suggesting that the injury could have been due to the fall. I accept the finding of the learned Sessions Judge that the fatal injuries were caused by the blow given by the accused.

4. It was strenuously contended on behalf of the appellant that the offence would not amount to culpable homicide not amounting to murder. The learned Judge held that the blow was on a vital part of the body and that the accused must have known that it was likely to cause death. I am unable to agree. The assailant and the victim were facing each other when the blow was given with the open hand by the accused. No weapon was used and the blow was not followed by other acts of violence. I do not think the offence amounts to even one of grievous hurt. It is true that the blow caused fracture of the vertebrae but that could not have been

intended or anticipated when giving a blow with the open palm on the neck. So long as the intention or knowledge to cause grievous hurt has not been proved, the offence is only one under section 323, even though, death ensued. The conviction must therefore be altered into one under section 323.

5. In the result, I set aside the conviction under section 304 part 2 and convict the accused under section 323. He will undergo rigorous imprisonment for one year for this offence. The appeal is allowed altering the conviction to one under section 323, and reducing the sentence as stated above.

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