

In Re: Palani Goundan

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Court : Chennai

Decided On : Apr-07-1919

Reported in : (1919)37MLJ17

Appellant : In Re: Palani Goundan

Judgement :

1. The accused was convicted of murder by the Sessions Judge of Coimbatore. He appealed to this Court, which took a different view of the facts from that taken by the learned Sessions Judge and has referred to us the question whether on the facts as found by the learned Judges who composed it, the accused has in law committed the offence of murder. Napier, J., inclined to the view that he had: Sadasiva Aiyar, J., thought he had not. The facts as found are these; the accused struck his wife a blow on the head with a plough-share, which knocked her senseless. He believed her to be dead and in order to lay the foundation for a false defence of suicide by hanging, which he afterwards set up, proceeded to hang her on a beam by a rope. In fact the first blow was not a fatal one and the cause of death was asphyxiation by hanging which was the act of the accused.

2. When the case came before us, Mr. Osborne, the Public Prosecutor, at once intimated that he did not propose to contend that the facts as found by the learned referring Judges constitute the crime of murder or even culpable homicide. We think that he was right in doing so : but as doubts have been entertained on the subject, we think it proper to state shortly the grounds for our opinion. By English Law this would clearly not be murder but manslaughter, on the general principles

of the Common Law. In India every offence is defined, both as to what must be done and with what intention it must be done, by the section of the Penal Code which creates it a crime. There are certain general exceptions laid down in Chapter IV, but none of them fits the present case. We must therefore turn to the defining Section 299. Section 299 defines culpable homicide as the act of causing death with one of three intentions:

(a) of causing death,

(b) of causing such bodily injury as is likely to cause death,

(c) of doing something which the accused knows to be likely to cause death,

3. It is not necessary that any intention should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another. 'Causing death' may be paraphrased as putting an end to human life: and thus all three intentions must be directed either deliberately to putting an end to a human life or to some act which to the knowledge of the accused is likely to eventuate in the putting an end to human life. The knowledge must have reference to the particular circumstances in which the accused is placed. No doubt if a man cuts the head off from a human body, he does an act which he knows will put an end to life, if it exists. But we think that the intention demanded by the section must stand in some relation to a person who either is alive, or who is believed by the accused to be alive. If a man kills another by shooting at what he believes to be a third person whom he intends to kill, but which is in fact the stump of a tree, it is clear that he would be guilty of culpable homicide. This is because though he had no criminal intention towards any human being actually in existence, he had such an intention towards what he believed to be a living human being. The conclusion is irresistible that the intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. It follows that a man is not guilty of culpable homicide, if his intention was directed only to what he believed to be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction, as in *Queen Empress v. Khandu* I.L.R. (1890) Bom. 194, or when the

facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in Gour Gobindo's case (1811) 6 W.R. CR 55 The facts as found here eliminate both these possibilities, and are practically the same as those found in The Emperor v. Dalu Sardar 18 C.W.N. 1279. We agree with the decision of the learned Judges in that case and with the clear intimation of opinion by Sergeant, C.J., in Queen Empress v. Kandau I.L.R. (1890) Bom. 194.

4. Though in our opinion, on the facts as found, the accused cannot be convicted either of murder or culpable homicide, he can of course be punished both for his original assault on his wife, and for his attempt to create false evidence by hanging her. These however are matters for the consideration and determination of the referring Bench.

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