

In Re: Ezhuvan Velappan

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Court : Chennai

Decided On : Jul-14-1943

Reported in : AIR1943Mad681; (1943)2MLJ176

Appellant : In Re: Ezhuvan Velappan

Judgement :

ORDER

Kuppuswami Ayyar, J.

1. This is a reference by the learned District Magistrate of Malabar with regard to the sentence passed on the accused in C.C. No. 13 of 1943 on the file of the Additional First Class Magistrate of Malabar. The accused was convicted for an offence punishable under Section 326, Indian Penal Code and released under Section 562(1) of the Code of Criminal Procedure on the accused executing a bond for Rs. 100 with two sureties for a like sum. The accused and P.W. 2 were baling out water to irrigate the fields of one Velani with a swing bucket. The rope broke and the bucket went off and struck against the accused. The accused was irritated and thereupon took a chandrasaham which was lying nearby and struck the complainant who got a bleeding injury. The complainant cried and others came and prevented the accused from causing further injuries. The injuries inflicted on P.W.2 resulted in his being in hospital for two months and thus being prevented from attending to his ordinary pursuits. The accused admitted the facts, but stated that' he was hit in the face when the bucket was thrown against him by the

complainant. He abused P.W. 2 and there was mutual recrimination. There was a struggle between him and others when he took some stick close by and struck, the accused. He afterwards realised that it was the weapon M.O. 1. The learned Magistrate was of opinion that though there was some provocation it was not such as would justify the act of the accused. He therefore found him guilty under Section 326. But as pointed out by the learned District Magistrate, the offence punishable under Section 326 is one punishable with transportation for life or with imprisonment of either description for a period of ten years. The provisions of Section 562(1) of the Code of Criminal Procedure therefore cannot apply to a conviction for an offence punishable under Section 326. The sentence is therefore illegal and it is set aside,

2. The accused had real provocation and all that he did was to take the weapon nearest to him and throw it at P.W. 2. It is an act done in annoyance when he received an injury which he thought was due to an act of P.W. 2. In these circumstances a sentence of one month's rigorous imprisonment is more than enough and I sentence him accordingly.

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