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In Re: Subba Chukli

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Court : Chennai

Decided On : Dec-04-1925

Reported in : AIR1927Mad582; (1927)52MLJ707

Appellant : In Re: Subba Chukli

Judgement :

1. The respondent in this case was charged with the murder of his sister-in-law. The evidence against him is this. He had quarrelled with his wife, and was beating her. Her sister intervened, saying 'You dog, why do you beat her in my sight.' At this respondent picked up a sickle, seized the sister by the hand and gave her two cuts on the neck which killed her on the spot. The Sessions Judge accepted the evidence but, being of opinion that respondent had been gravely provoked, and did not intend to cause death, convicted him under the second part of Section 304, Indian Penal Code, and sentenced him to undergo seven years' rigorous imprisonment.

2. Respondent has been called upon to show cause why he should not be convicted of murder, and why the sentence passed on him should not be enhanced to one of death. We are satisfied that we have no power in revision to do what is tantamount to converting a finding of acquittal into one of conviction. The respondent has been acquitted by the Sessions Judge of murder and also under the first part of Section 304, Indian Penal Code, and we cannot convict him of either of these offences except on an appeal by the Local Government. No doubt, there is a ruling of the High Court to the contrary effect in Re Bali Reddi ILR

(1913) M 119. It lays down that the finding of acquittal referred to in Section 439, Criminal Procedure Code, must be a complete acquittal. With great respect we think that the effect of that decision is to import into Section 439 'something thatis not there. The wording of the section is quite clear. It prohibits the converting of a finding of acquittal into one of conviction and says nothing about the acquittal being partial or complete. We think that the correct view has been enunciated in Emperor v. Sheo Darshan Singh ILR (1922) A 332. We must, therefore, decline to alter the finding or enhance the sentence. We desire to say as little as possible about the merits of the case in view of the action we propose to take. There has, we consider, been a miscarriage of justice. We set aside the conviction and order a retrial on the charge of murder by the present Sessions Judge of Coimbatore.

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