

Kesava Chetti Vs. Emperor

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Court : Chennai

Decided On : Jan-21-1931

Reported in : AIR1931Mad420

Appellant : Kesava Chetti

Respondent : Emperor

Judgement :

1. The appellant was charged in the lower Court with murdering one Chinnaswami Chetty by striking him on the head with a heavy stick by reason of which blow Chinnaswami Chetty's skull was fractured in consequence of which he died. He was convicted in the lower Court of the offence of murder and received the death sentence. His case here has been strenuously argued by Mr. Rama Rao who has endeavoured to convince us that the offence committed by his client was not that of murder but only culpable homicide not amounting to murder. In the alternative his contention is that if his offence does amount to that of murder, the lesser sentence of transportation for life is the appropriate one.

2. The facts of the case are as follows: The appellant is the brother of a man named Chinna Pillai. Chinna Pillai was not at all on good terms with his wife and was habitually quarrelling with her. In consequence of those quarrels his wife had to leave him on several occasions previously. On the date in question, at about midnight a violent quarrel took place between Chinna Pillai and his wife, so violent that it brought other persons, relations by marriage and blood relations and others

who were not related at all, on the spot. It also brought on the spot Chinnaswami Chetty, the uncle of Chinna Pillai's wife. He came upon the scene, according to the evidence for the prosecution, in order to make peace. His presence there was resented by the appellant who gave him a slap on the face, and having done this the appellant went away to a cart close by, picked up a cart stick, came back with it and struck the deceased three blows: one on his skull and the other two on each side of his face. The blow on the skull fractured it and as a result of that blow Chinnaswami Chetty died. After Chinnaswami Chetty had fallen down as a result of this very severe blow those round about the scene chased the appellant into the house of P. W. 9 and there is no doubt at all that somebody picked up a stick which had fallen down from his hands and gave him a severe blow on one of his wrists and fractured it. The medical evidence discloses the fact that the appellant had bruises on his body and that his wrist was fractured. The appellant has endeavoured to make out that he received this fracture before the beating of Chinnaswami Chetty and not after, but we have no hesitation whatever in disbelieving that version; and we are satisfied that the injuries the appellant received were after he had struck Chinnaswami Chetty the very severe blow on the head. According to the medical evidence considerable force must have been used in order to cause that fatal injury to the deceased. In the committing Magistrate's Court the appellant set up the case of drunkenness. He said that he, the deceased and others had been drinking heavily and that he was intoxicated and did not know what happened.

3. In the Sessions Court, when he was defended by two counsel, he set up the defence that he knew all about it, that he was attacked by the deceased man with the stick and that the injuries to the deceased were caused accidentally by P. W. 2, a version of the affair which we cannot possibly accept in view of the prosecution evidence. He has called two defence witnesses both of whom are quite unable to account for the death of Chinnaswami Chetty. They do not mention his being struck by anybody and the evidence of both these witnesses cannot be accepted. We are bound to accept the prosecution version supported as it is by the eyewitnesses to the occurrence. The result is that we are satisfied that the appellant struck this very severe blow on the head of the deceased and caused his death. He must be taken to have known that to strike a man on his skull with a

stick using considerable force was an act so imminently dangerous that it must in all probability cause death and that he did so without any possible excuse. This therefore is the offence of murder and nothing short of it. The appellant was therefore quite properly convicted of that offence.

4. We have however to consider the question of sentence. As before stated, the appellant was sentenced to death by the learned Sessions Judge. We have examined the records very carefully and gone into the facts of the case very carefully in order to see whether there are any extenuating circumstances which would justify us in inflicting upon the appellant the lesser alternative sentence. We think that we are justified in doing so on the ground that, although he must be taken to have known that what he was doing must in all probability cause the death of the deceased and his offence was therefore murder, he, in striking the blow, had no real intention, in the strict sense of the word, to kill the deceased man. We are supported in our view' by a decision of the Allahabad High Court reported in *Emperor v. Umrao* A.I.R.1923 All.355. That is a decision of the learned Chief Justice of that Court Sir Grim-wood Mears and Banerji, J. In that case the accused person struck only one blow with a lathi on the skull of a man with whom he had quarrelled previously; that man died and it was held that although the accused did not intend to kill him he was guilty of an offence under Section 302, I. P.C., and not under Section 301, but it was held that as he had no intention to kill that could be taken as a circumstance in extenuation of his offence and that he could be awarded the lesser of the two sentences.

5. This case is a border line case and we give the appellant the benefit of any doubt that may be in the case. Therefore whilst confirming the conviction of the appellant under Section 302, I. P.C., we alter the sentence to one of transportation for life. The appeal is otherwise dismissed.