In Re: Muniandi Servai

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SooperKanoon Citation : sooperkanoon.com/798255

Court : Chennai

Decided On : Nov-02-1943

Reported in : AIR1944Mad251

Appellant : In Re: Muniandi Servai

Judgement :

Shahabuddin, J.

1. The appellant Muniyandi Servai has been convicted and sentenced to death by the learned Sessions Judge of Ramnad for the murder of one Kayambu Ammal. With the appellant, his cousin accused 1, was tried for the abetment of this murder; but the learned Sessions Judge convicted him of the abetment of causing hurt and sentenced him to a fine. We are concerned in this case only with the appellant, accused 2 before the trial Court.

2. The case for the prosecution is that on 26th May last at about 11-30 A. M., the deceased Kayambu Ammal who was Irving in the house opposite to that of accused 1, close to which the appellant was living, came along the street leading the bulls of accused 1 abusing him because they had grazed in her paddy fields. Accused 1 thereupon asked the deceased in abusive language not to drive the bulls which she was taking to the pound, and the deceased abused him. At that stage the appellant interfered and accused 1 asked him to beat and kill the deceased. The appellant thereupon picking up a rice pounder hit her on the head

as a result of which she fell down and died a few hours later. As soon as the deceased fell down P.W. 5 picking up a stick hit the appellant on the head. Both the appellant and accused 1 then ran away. The deceased was then taken in a cart to Ramnad hospital. All the eye-witnesses except P.W. 11 accompanied her. They reached the hospital but before the deceased could be carried into the hospital she died.

3. No information of this occurrence was given to the village Munsif but the Sub-Inspector having had vague information about this occurrence went to the village and from there to the hospital where he found all the eyewitnesses except P.W. 11. He recorded the first information from P.W. 5. Post-mortem disclosed a comminuted depressed fracture of the left parietal bone as well as the base of the skull and death was due to this extensive fracture. The case of the appellant before the Committing Magistrate and the learned Sessions Judge was that he and other villagers had petitioned against one Sundararajan Servai and the eye-witnesses had falsely implicated him at the instance of that Sundararajan Servai. The appellant was absconding and when arrested on 30th May had an injury on the head.

4. The learned Sessions Judge accepted the evidence of the eye-witnesses as true, and we agree with him. There can be no doubt that the fatal blow was dealt by the appellant as stated by the eye-witnesses. Their evidence is consistent in this respect and, we have not been shown any reason for disbelieving them. On the other hand, learned Counsel appearing for the appellant admits that he cannot challenge their evidence. But his contention is that the act of the appellant does not amount to the offence of murder. He argues that Exception 4 to Section 300, Penal Code, applies and that in any case having regard to the utter lack of motive for the appellant to kill the deceased he cannot be said to have intended to kill her or to inflict the injury which was in fact inflicted. In support of this latter argument, he has drawn our attention to the decision of the Bombay High Court in Emperor v. Sardarkhan Jaridkhan A.I.R. 1916 Bom. 191. We are unable to accept either of these contentions. Exception 4 obviously does not apply to the facts of this case. There was no fight between the appellant and the deceased. There was only an exchange of abuse and the appellant in picking up the rice pounder and hitting the

deceased with such force as to cause an extensive fracture of the skull did take undue advantage and acted in a cruel and unusual manner. It is no doubt true that there is nothing in the evidence to show that the appellant had a motive to kill the deceased, but it cannot be said that the appellant while hitting the deceased with a rice pounder which, in our opinion, is a deadly weapon, did not intend to cause the injury which led to her death. Even if it is considered that he had no intention to kill, there can be no doubt that he intended to inflict the injury which he actually inflicted; and he must have known that such an injury is sufficient in the ordinary course of nature to cause death. The observations in Emperor v. Sardarkhan Jaridkhan A.I.R. 1916 Bom. 191, relied on by learned Counsel for the appellant, appear to us to apply to the special circumstances of that ease where the weapon of offence was a ferruled stick which is used ordinarily in every day life. However, if that decision is an authority for the position that in every case of death resulting from a single blow dealt in heat of passion, the offence is not murder, we respectfully disagree. In the circumstances of this case, we have no doubt that the appellant's act amounts to the offence of murder. We, therefore, confirm the conviction and also the sentence of death which, in our opinion, is the only appropriate sentence having regard to the injury inflicted and the weapon used. The appeal is dismissed.