

In Re: Kayambu Tevan

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Court : Chennai

Decided On : Jan-10-1916

Reported in : 32Ind.Cas.670

Judge : William Ayling and ;Napier, JJ.

Appellant : In Re: Kayambu Tevan

Judgement :

1. It is not contested that accused caused the death of deceased Sankaranarayana Pillai by stabbing him under the shoulder blade, severing two ribs and penetrating the pleural cavity. The nature of the injury fully justifies the inference that accused intended to cause either death or such bodily injury as was likely to cause death, and we do not understand why the Sessions Judge convicted accused only under the second clause of Section 304, Indian Penal Code.

2. The main contention of appellant's Counsel is that he is entitled to the benefit of Section 100, Indian Penal Code, but we can find no ground for holding that the appellant was under any apprehension of death or grievous hurt; and we have no hesitation in rejecting this plea.

3. The Sessions Judge has applied exception 1 to Section 300 in accused's favour; but, in our opinion, the more appropriate clause is exception 2. If there were legal evidence (which there is not) that accused had been duly proclaimed

under Section 87, Criminal Procedure Code, it would be a question whether it might not be inferred that the accused knew that the men who seized him were acting under the law. In that case, the offence must be viewed as murder (section 302, Indian Penal Code). The prosecution has, however, omitted to file the statement referred to in Clause (3) of Section 87 or to adduce other evidence of publication; and we must take it that this is not proved. In such circumstances accused might be entitled to the benefit of exception 2 to Section 300, though we are unable to accept the contention of his Counsel that the sentence is in any way severe.

4. We confirm the conviction and sentence and dismiss the appeal.

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