

In Re: Ammu Pujary

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Court : Chennai

Decided On : Oct-01-1941

Reported in : AIR1942Mad295; (1942)1MLJ200

Appellant : In Re: Ammu Pujary

Judgement :

King, J.

1. The appellant has appealed from jail against his conviction by the learned Sessions Judge of South Kanara on two charges, one for the murder of the deceased Giriappa and secondly for causing hurt by a dangerous weapon to P.W. 3. The learned Judge in convicting the appellant of murder has held that he did not kill Giriappa in exercising the right of private defence. It seems to us that the learned Judge's reasoning in regard to this part of the case is open to much criticism. The learned Judge concedes in paragraph 11 of his judgment that, according to the case for the prosecution itself, facts were established which gave the appellant the right of private defence. The facts were that the deceased had struck him with a stick and was prepared to strike him a second time and the learned Judge held that there were grounds for his apprehending that he would be hurt. But in paragraphs 11 and 12, the learned Judge unduly stresses the proposition that the appellant must, prove that he bona fide believed that he was about to be killed or to suffer grievous hurt before he can plead the right of private defence at all. This mistaken view is repeated at the conclusion of paragraph 13;

and in paragraph 15 the learned Judge in analysing the situation does so, so subtly as to require the appellant to prove that he had what he calls the 'problem' of self-defence before his mind and that with that 'problem' in view, he deliberately took the action he did in order to save his life. By this kind of reasoning the learned Judge has of course excluded any possibility of consideration of a plea that the appellant was justified in defending himself but had exceeded his right of self-defence and therefore his offence might be reduced from the offence of murder to that of culpable homicide not amounting to murder. We desire to make it clear that, when an accused person commits an act of violence upon another person in circumstances which prove that he is apprehending further violence from that person, nothing further need be proved to establish that the accused is acting in the exercise of his right of self-defence. Circumstances themselves show that unmistakably, and the learned Judge is wrong in throwing upon the accused the burden of proving that he had in fact consciously exercised his right of self-defence when he used his knife. Of course situations are conceivable in which, in spite of the fact that some violence is being used against an offender, he regards that violence as negligible and he acts with the deliberate intention of killing, and without any intention at all of defending himself. But these circumstances have not been made out in the present case. It is clear from the evidence that physically speaking the deceased was a more robust man than the appellant. It is clear that he used a fairly stout stick in order to beat him and threaten him. One can only therefore make the natural presumption that, when the appellant took out his knife and stabbed the deceased, he was doing so in order to prevent his receiving any further injuries himself.

2. The question then arises whether the appellant was so far justified in his action as to be entitled to an acquittal or whether his offence amounts to culpable homicide not amounting to murder. We are unable to hold that the appellant has made out any facts sufficient to show that he was justified in causing death. His case was that he received blows upon the head but none of the prosecution witnesses admits any such fact. They speak of the one blow delivered by the deceased as falling upon the appellant's person or body. The appellant was medically examined on the 15th January, which was nine days after the offence and there were no marks of any injuries then found upon him. It seems clear from

that fact that no serious blow can have been inflicted upon him by the deceased. It is of course for the appellant to make out that circumstances existed which would justify his causing the death of the deceased. This, in our opinion, he has quite failed to make out. On the other hand, as we have already pointed out, the circumstances which are held to have been proved by the learned Judge himself according to the evidence-for the prosecution show beyond doubt that in using his knife the appellant must have been acting in the exercise of his right of self-defence and must have exceeded that right because all that he could reasonably have apprehended was the infliction upon himself of simple hurt.

3. In these circumstances we set aside the conviction for murder and convict the appellant instead of culpable homicide not amounting to murder, and for this offences sentence him to rigorous imprisonment for five years. The conviction and sentence under Section 324, Indian Penal Code are confirmed and We order that the sentences shall run concurrently.

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