

In Re: Gurusami Tevan

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Court : Chennai

Decided On : Aug-05-1938

Reported in : (1940)1MLJ747

Appellant : In Re: Gurusami Tevan

Judgement :

Pandrang Row, J.

1. The appellant in this appeal has been convicted of attempt to murder and sentenced to undergo rigorous imprisonment for six years under Section 307, I.P. Code, by the Assistant Sessions Judge, Madura. The fact that it was the appellant who stabbed P.W. 3 during the night in question is established by the evidence of P.W. 3, which has been accepted by the learned Sessions judge as well as by the assessors as being true. There is also the further fact that in a complaint made by the appellant himself at the Police Station he alleged that P.W. 3, was running away after setting fire to his house and that he pursued him that night in order to catch him, whereupon P.W. 3 beat him with a stout stick and he had to stab P.W. 3 in defence. I see no reason to doubt the veracity of of P.W. 3 in these circumstances. Some argument was addressed to me on the point that the complaint made by the appellant to the police must be deemed to be a statement made in the course of investigation and therefore must be deemed to be one under Section 162, Criminal Procedure Code. I am not impressed with the argument and I do not think the statement is inadmissible either because it is a statement made under Section 162, Criminal Procedure Code, or because it is a confession made to a Police Officer. Even apart from it and excluding the complaint from consideration, there is the evidence of P.W. 3 which there is no reason to reject. The Court that heard his evidence including the assessors has found it to be reliable and there is nothing improbable in it.

2. The question however remains whether the offence disclosed by the evidence is one of attempt to murder and not merely one of causing grievous hurt with a dangerous weapon. Only one stab was given and there is nothing to show that the injury inflicted was likely in the ordinary course of nature to cause death. The medical evidence is only to the effect that if sepsis and gangrene had intervened, it would have endangered life, but this may be said of most injuries caused with sharp weapons. That cannot be regarded as a reason for coming to the conclusion that this was an attempt to murder. The assessors were unanimously of the opinion that the offence was only one of causing grievous hurt with a dangerous weapon, but the learned trial Judge appeared to have thought that their opinion on this point could be ignored because they could not be expected to use his own words:

To discern the subtle distinction between an offence under Section 326, Indian Penal Code and an offence under Section 307, Indian Penal Code.

3. The distinction between these two offences whether it can be rightly regarded as subtle or not, was in this case perceived more clearly in my opinion by the assessors than by the learned trial judge. I have no doubt that the assessors were right and that the trial Judge was wrong. The conviction is therefore modified into one under Section 326, Indian Penal Code. In the circumstances of the case the appellant is sentenced under

Section 326, Indian Penal Code, to undergo rigorous imprisonment for two years.

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