

In Re: Sundararaju

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SooperKanoon Citation : sooperkanoon.com/807686

Court : Chennai

Decided On : Jul-05-1963

Reported in : 1964CriLJ457

Judge : Kailasam, J.

Appellant : In Re: Sundararaju

Judgement :

Kailasam, J.

1. The disposal of the sessions case by the learned Judge is most unsatisfactory. A charge Under Section 304, Part II, IPC was framed against the first accused, and Under Section 323 against the second accused. Both the accused pleaded guilty. The learned Judge accepted the plea of the accused as voluntary and not induced as in his opinion they got the advice of Sri R. Kalyanasundaram Iyer, learned defence counsel. After accepting the plea of the first accused, the learned Judge has referred to the evidence of P. Ws. 1 to 4 and 6 in the committal Court though their evidence was not recorded in the sessions Court. The learned Judge without referring to the evidence of the doctor relied on the post-mortem certificate issued by the doctor. The procedure adopted by the learned Judge is not warranted in law. The learned Judge can only act on the evidence that was tendered before him. This case emphasises the necessity for the learned Judges to take evidence even though the accused pleads guilty in grave offences like

murder. The plea of guilty by the accused is only in relation to the facts charged and not as regards a particular offence. The learned Judge erred in proceeding on the basis that the accused pleaded guilty of an offence Under Section 304, Part II, IPC

2. The learned Counsel Mr. Santhanam, appearing for the first accused, appellant has pointed out that in the evidence of the doctor in the committal Court it is stated that the victim was suffering from a diseased spleen. The evidence of the doctor before the committal Court is not evidence before the Sessions Judge or before me. But certainly the accused is prejudiced by the learned Judge giving an extract of the wound certificate without mentioning to the evidence of the doctor in the committal Court which mentions that the victim had diseased spleen. The procedure adopted by the learned Judge is irregular.

3. Strictly this is a case for re-trial, but I do not think I will be justified in directing the accused to stand a fresh trial for, though there is no legal evidence, there is material to show that the victim was suffering from diseased spleen. Taking that fact into consideration I reduce the sentence to one year rigorous imprisonment. The conviction Under Section 304, Part II is confirmed.