

In Re: Devasahayam

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Court : Chennai

Decided On : Dec-01-1960

Reported in : (1962)1MLJ161

Appellant : In Re: Devasahayam

Judgement :

Anantanarayanan, J.

1. The appellant, one Devasahyam, was charged with the murder of a seven year old boy namely Lakshmanan, by causing him hurt with some kind of an iron tool. The learned Sessions Judge of Ramanathapuram at Mathurai convicted the appellant under Section 325, Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years.

2. I might state immediately and tersely, after having scrutinised the entire record with some care, that the conviction is not sustainable. This is clearly a case of an accident, within the scope of Section 80, Indian Penal Code and no offence is really involved. Even if there was some slight negligence on the part of the accused, on the occasion in question, which led to the tragic death of the boy it would appear to amount only to an actionable wrong, for which a claim in damages might perhaps be sustained against the appellant. Even Section 304-A of the Indian Penal Code does not appear to apply.

3. The facts are very clear and simple. The appellant and P.W. 1 are good friends, and the boy Lakshmanan (deceased) was actually something of a pet as far as the appellant is concerned. This boy came and pestered the appellant for cocoanuts, for which his father (P.W. 1) had sent him, when the appellant was lying practically asleep at the mill premises, where he was employed. The appellant later made a judicial confession (Exhibits P-4 and P-4-A), which is the basis of the case for prosecution, and which seems to be true as far as we can judge. This is how he describes the accident happened:

He refused to go and pulled my towel. In front of where I lay, there was the shelf box. He stood near it and was pestering me for coins and if not to give tender cocoanuts. I was dazed on account of sleep. I had kept the hammer, spanner and screw driver over the shelf. I thought that since he was pestering me like this, he would go away if I struck against the articles and I dashed off the articles piled up and asked him if he would not go. It seems that hammer had gone and hit him on the head. I being dazed on account of sleep, I had not consciousness for a minute whether the boy was there or had run away. Suddenly I got up. Blood was oozing out from the head of the boy. I trembled and placed my hand on the boy's head. The boy swooned and fell down.

4. Subsequently, the accused describes his ineffectual attempts to revive the boy, the arrival of one Oomayan, how they found that life was extinct and how ultimately Oomayan placed the body in the boat kept in the mill compound, in order to screen the accused. The later conduct of the accused, however reprehensible, was due to sheer cowardice, and does not affect the substance of the charge against him.

5. This confession has, no doubt, to be appreciated in the light of the results of the autopsy and the medical evidence. The evidence of Dr. Thirunavukarsu, P.W. 2, makes it clear that the boy died, because he had sustained a circular depressed fracture, half an inch in diameter, in the middle of the frontal bone of the skull. The doctor states:

A medium weight blunt weapon must have caused the depressed fracture. The boy was 3 feet, 6 inches. A rod like M.O. 6 thrown on the boy's head, the weapon

coming into violent contact with the skull, can cause the injury.

6. Purely on this aspect, the learned Sessions Judge thought that a rod, M.O. 6 might have caused the injuries. He points out that if the hammer, M.O. 7, had been wielded as a weapon of offence, the head would have been smashed to pieces. Undoubtedly, neither the rod nor the hammer was used as any weapon by the accused. It seems to me to be very probable that the accused swept the instruments on the shelf with his hand, in order to cause a rattle and frighten the boy or send him away, as he claimed. In his sleepy state, he (the appellant) seems to have thus dislodged the hammer. Since the boy must have been standing below the shelf, it is very likely that the hammer hit him on the head and caused the fracture which led to his immediate death.

7. In convicting the appellant under Section 325, Indian Penal Code, the learned Sessions Judge has overlooked the explicit terms of Section 80, Indian Penal Code, which was enacted precisely to cover contingencies of this character, which however regrettable, do not expose those responsible to proceedings under the penal law. The learned Sessions Judge also ignored or overlooked the definition of hurt under Section 321, Indian Penal Code, and the specific Explanation to Section 322, Indian Penal Code, which defines grievous hurt. Both these make it clear that either the ingredient of intention or that of knowledge must be essentially present in order to constitute the offence of hurt. Since the appellant clearly never intended to cause hurt, and could not be credited with any knowledge that hurt or grievous hurt would be caused by his act, and the fracture was due to a sheer accident, the appellant cannot be convicted under the penal law.

8. Accordingly, I allow the appeal and acquit the appellant. The bail bonds will be cancelled.