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In Re: Packirisami Pillai

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Court : Chennai

Decided On : Sep-01-1941

Reported in : AIR1942Mad288

Appellant : In Re: Packirisami Pillai

Judgement :

Horwill, J.

1. Accused I and 2 in the Court's of the Sessions Judge of East Tanjorewere charged Under Section 304 (1), Penal Code, with causing serious injuries to the person of one Sivaswami Servai which led to his death. They were charged Under Section 304(1) and not Under Section 302, Penal Code, because the evidence was thought to show that the deceased had given a blow to accused 1 which justified them in causing such injury to the deceased as would be sufficient to prevent him from causing the necessary further injury. Accused 2 was acquitted because the learned Sessions Judge thought that the circumstances of the case made it probable that he was not present at the scene of the offence when the crime was committed. The appellant was sentenced to 18 months' rigorous imprisonment. Accused 3 was charged with abetting the offence Under Section 304(1); but it was found that he had taken no part in the attack on the deceased and had not instigated the appellants. So he too was acquitted. The occurrence is spoken to by many witnesses including P.W. 4, the wife of the deceased P. Ws. 5 to 8, who are persons distantly connected with the deceased and whose stories

developed at. different stages to such an extent that the learned Sessions Judge thought it not safe to rely on their testimony.

2. The learned Sessions Judge came to the conclusion that the deceased stabbed accused 1 upon his eye with a penknife before accused 1 stabbed him; but there is no evidence on the record to show that the deceased used such a weapon, save that there was a cut on the eyebrow which was 1 1/2 inches long and 1/4 inch deep. This could have been caused by a sharp weapon; but the fact that it was surrounded by a highly contused area makes it more probable that the injury was caused with a blunt weapon. The doctor who examined him (P.W. 2) says that it could have been caused by a blunt weapon. He adds that it could have been caused by a sharp weapon, but presumably in that case the contusion was caused by a separate blow. The circumstance on which the learned Sessions Judge seems to base his conclusion is a statement made by P.W. 6 to the police Under Section 162, Criminal P.C., which was filed to contradict a statement of his in the Sessions Court. Such a statement is of course not substantive evidence at all and can be used only to contra-diet statements made during the trial. However, whether the injury was caused by a small knife or with a stick, matters little. The blow given by the deceased caused a reasonable apprehension that further injury was possible; but the accused clearly exceeded his right of private defence of his person in causing such severe injuries as he did to the deceased. The sentence imposed by the learned Sessions Judge is a very lenient one. The conviction and sentence are therefore affirmed and the appeal dismissed. The learned Sessions Judge filed a number of statements recorded in the case diary to prove omissions. Although in some extreme cases that might be permissible, it was certainly not proper in the present case. The record made in the case diary does not purport to be either thorough or complete. The absence of a statement in the case diary is not in itself evidence that such a statement was not made. The proper way to prove an omission is to question the police officer who wrote the diary whether a particular statement was made to him. Ho may be able to say that it was not made to him because he feels sure that if it had been made it would have found a place in the case diary. If he cannot say so, an omission cannot be proved by filing the case diary.

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