

In Re: Marimuthu Alias Mari

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SooperKanoon Citation : sooperkanoon.com/817136

Court : Chennai

Decided On : Feb-15-1923

Reported in : AIR1924Mad41

Appellant : In Re: Marimuthu Alias Mari

Judgement :

Ayling, J.

1. The accused in this case was tried before the Sessions Judge of Trichinopoly, on charges under Sections 323, 302, 304 and 325, Indian Penal Code, in connection with the death of his wife. The Sessions Judge convicted him for an offence under Section 323 and sentenced him to one year's rigorous imprisonment but acquitted him on the other charges. Against this acquittal Government had appealed under Section 417, Code of Criminal Procedure, and in the same connection the case was taken up in revision under the orders of a learned Judge of this Court.

2. The case against accused, as disclosed in the prosecution evidence is as follows. The deceased, a young woman of 19, was on bad terms with her husband, the accused, and had on several occasions returned to her parents' house complaining of his ill-treatment. She was last brought back from there within a week of her disappearance. On the 9th July, she was sent for, to visit her sick mother and accused agreed to let her go; but, before starting for the latter's village

went with her to a Muniyanar temple situated just outside a reserved forest. She wanted to worship there; and he wanted to cut a ploughshare in the adjacent reserve. They were seen together by two witnesses (P.W. Nos. 2 and 3) near the temple and just inside the reserved forest, before sunset that evening. The woman was never seen again alive; but a female skeleton was found some days later in the reserved forest, which was suspected to be that of deceased. Accused was arrested on suspicion and produced all the woman's jewels including her tali.

3. He subsequently made a confessional statement (Exs. J-1. to J-3), which he repeated in the committing Magistrate's Court (Ex. K) though he retracted it before the Sessions Judge. In this, he stated that he and his wife had a quarrel in the forest and that he first slapped and then kicked her and so unintentionally caused her death

4. The Sessions Judge found the confession to have been freely and voluntarily made and attached no importance to accused's allegations of ill-treatment, or his retraction before the Sessions Court. He accepted it as a true version of what occurred and in this view of the facts held that no intention to kill or even cause a grievous hurt could be attributed to accused and accordingly convicted him only of voluntarily causing simple hurt.

5. It will be seen from the above that apart from the confessional statement, there is quite a strong case against accused for conviction under the more serious Sections (Sections 302 and 304, Indian Penal Code.) The statement is incriminatory, in so far as it shows that accused caused his wife's death; but it is exculpatory in so far as it tends to palliate accused's action by reference to the manner and circumstances attendant and the intention to be ascribed to accused. It is in the latter aspect that it has most practical importance. The medical evidence throws no light on the cause of death. None of the bones of the skeleton were found to be fractured; and although the skull was separated from the trunk, this may well have been the work of wild animals. The Sessions Judge had deduced from this that accused could not have used his axe in killing his wife and having further regard to the absence of any very deadly ill-feeling has accepted in its entirety the version of the occurrence put forward by accused in Exs. J-1 to J-3.

and K.

6. I cannot help feeling considerable doubt, as to whether these statements contain the whole truth, and whether accused has not at any rate considerably minimised the violence he used to cause his wife's death. A slap on the cheek and a kick (or even kicks) on the side are not likely to have caused the immediate death of a healthy young woman of 19. However, in all the circumstances of the case and particularly as the matter came before us by way of revision and appeal against acquittal, I am loth to say that the Sessions Judge was not justified in accepting accused's version of what occurred. I shall therefore proceed on the assumption that it is correct, and only consider whether accepting it, accused should have been convicted of a more serious offence than causing simple hurt. This is the story in accused's own words as given in Ex. K.

I got angry and beat my wife on her cheek with my hand. She fell down saying 'be ruined, be damned.' Saying 'has it come to this with you because I keep you in the house as a Mahomedan woman and supply you with all necessaries in the house.' I gave a kick forcibly. It struck on the side of my wife. I stopped for a while and observed. There was no breathing or talking,⁷. Now, the slap on the cheek could have done little harm, though it would seem to have been forcible enough to knock the woman down; but the kick (or kicks) on the side would seem to have caused practically instant death. There is nothing to suggest that she was suffering from any disease; and I think we may fairly infer that he must have kicked the woman with tremendous force to produce such an effect, and that a man who so kicks a prostrate woman on the side must be credited with the knowledge that he is likely thereby to cause her death, even if he be exonerated from the more definite intention or knowledge required by Section 302, Indian Penal Code. It is beside the point to say, as the Sessions Judge does, that 'illfeelings between accused and his wife were certainly not such as to make the accused wish for the death of his wife,' in cold blood; accused probably entertained no such desire. But he says that just before this he had taxed her with consorting or at any rate, flirting with other men and she had in effect replied 'what doet it matter?' ('on accouut of their coming and going, what is lost?'). He then struck her on the cheek and she fell down abusing him. In such circumstances he may well have felt considerable

anger, and it is wrong to argue that he could not have meant to kill his wife, because he had no sufficient motive to do so.

8. The learned vakil who argued the case for accused before us has relied on the judgment of Straight, J., in *Empress of India v. Idu Beg* [1881] 3 All. 776, to show that at the worst accused can only be convicted of causing grievous hurt (Section 325, Indian Penal Code) and not of murder or culpable homicide. I do not think it supports any such conclusion. The learned Judge in that case, was at great pains to explain the scope of Section 304-A Indian Penal Code, and in particular to show that it did not cover 'cases of direct violence wilfully inflicted'. It is only in the latter part of his judgment that he deals with the question of what intent or knowledge should be ascribed to the accused, on the facts of the particular case before him. And he says:

I should certainly not have disturbed the order of the Judge, had he convicted of culpable homicide not amounting to murder, on the ground that there must have been knowledge that death would be a, likely result. At the same time I am willing to accept his conclusion that there was no such knowledge, though further than this, I cannot adopt this view.⁹ In other words, he accepted, though apparently not without some doubt the lower Court's finding that the accused in that case did not know that death was a likely consequence of his act. Such a decision can hardly in this respect be any guide to another Court dealing with another case.

10. For myself, I think that in the present case a conviction for causing grievous hurt would be illogical as well as inadequate to the facts. The only category of Section 320, Indian Penal Code, which could possibly be applied is the eighth 'any hurt which endangers life' and I do not think this phrase was intended to apply to cases, in which life was not merely 'endangered but actually taken away.' But, however this may be, the circumstances seem to me to fully justify the inference that in kicking the deceased, accused knew that he was likely to cause death and I hold him guilty of an offence under Section 304, Indian Penal Code, (latter portion). His subsequent conduct in stripping his dead wife of her jewels and even cloth and leaving her naked body in the jungle are incompatible with any very light sentence, and I would therefore impose a sentence of five years' rigorous

imprisonment.

Odgers, J.

11. I agree that under the circumstances we should accept the finding of the Sessions Judge that the confession of the accused is a true statement of the facts which occurred. According to this, the accused and his wife had a quarrel and he taxed her with intimacy with other men. He got angry, slapped his wife with such force that she fell down. She cursed him in so doing and he 'gave a kick forcibly on her side' She died immediately. There is no evidence or even plea of the existence of disease. The question is what on these facts is the intention to be imputed to the accused? Section 299 (last clause) defines culpable homicide as causing death with the knowledge that he is likely to cause death.

12. The only kind of grievous hurt (Section 320) which could by any possibility be applicable to this case is the eighth, viz., any hurt which endangers life.

13. Here the accused 'kicked forcibly.' The confession says only one kick; but there may well have been more, at any rate the violence of the single kick must have been very severe. In *Empress of India v. Idu Beg* [1881] 3 All. 776 which was brought to our notice and strongly relied on for the accused, the blow was a single one and the learned Judge (Straight, J.) said he would have disturbed the order of the District Judge had he found the accused guilty of culpable homicide not amounting to murder, on the ground there must have been knowledge that death would be a likely result. That was a case of Section 304-A and all it actually decided was that cases of direct violence wilfully inflicted do not fall within that section. In the present case the kick not only endangered life but on accused's own showing caused immediate death and it appears to me that it was administered with such violence that the accused must be taken to have known that it was likely to cause death, there being no evidence of any other contributory cause.

14. I therefore agree with the judgment of my learned brother and with the sentence proposed by him.

