Emperor Vs. Damullya Molla

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SooperKanoon Citation : sooperkanoon.com/874014

Court : Kolkata

Decided On : Jul-25-1930

Reported in : AIR1931Cal261

Appellant : Emperor

Respondent : Damullya Molla

Judgement :

Rankin, C.J.

1. In this case it appears that the accused man committed a violent assault upon his wife. The quarrel seems to have begun in a trivial manner by a dispute why the wife had not served the accused his meal. She appears to have replied rudely to her husband and the accused seems to have then got into an extreme state of rage and began to beat her with a lathi and in spite of the attempt on the part of the daughter and afterwards of other people, he not only struck the woman with a lathi but followed her to a certain place, picked up a badna or water-pot and hit her on the head. There were a good many injuries caused in this way by this savage assault on the woman as many altogether, taking great and small, as 13, but the cause of the woman's death was undoubtedly the blow by the water-pot which made a contused wound on the head 5' x 1' bone deep, and it was discovered that there was a fracture of the left parietal bone caused by the blow by this water-pot. It is quite true that several people tried to stop the man and that; he persisted in this attack, and the real question is not whether the man is guilty but whether the

learned Judge was entitled to say that it was unreasonable on the part of the jury to find him guilty only under Clause 2, Section 304, I.P.C.

2. The learned Judge cross-examined the jury in a way which I cannot approve and the jury said that there was grave and sudden provocation which I should have thought was nonsense; but they also paid that the accused beat his wife not knowing that the injury he was causing would be likely to cause death and that the injury which he intended was not sufficient in the ordinary course of nature to cause death.

3. The learned Judge has referred the case to us upon the strength of 'a piece of reasoning which seems to me to be entirely erroneous. He says this:

If the fact that the injuries did actually cause death within a short time is enough to show that they were in fact sufficient to cause death and if again every sane adult may be presumed to intend the natural consequences of his act, there can be little room for doubting that the intention of the accused was to cause such injuries as were sufficient in the ordinary course of nature to cause death, even though he might not have the knowledge that these injuries would probably cause death.

4. It appears to me that this is reasoning in a circle and that the learned Judge has misdirected himself in law. The question in such cases is not concluded by any amount of reasoning from the mere fact that the injury caused did in fact result in death. What one has to see is, first, what degree of injury did the man intend; and secondly what did he know as to the consequences of such injury. In this case, the jury were quite entitled to find that he did not know that the amount of injury which he would do when he struck the woman on the head by a water-pot would be such as would likely to cause death nor did he intend such an injury as in the ordinary course of nature would cause death.

5. It is pointed out by the learned Counsel for the accused that in this case, though 18 jurors were summoned, the accused was tried with seven jurors only because only eight jurors attended. It is suggested that the learned Judge should have obtained two more jurors from among the bystanders. But there is nothing on the record before us to show that this course was practicable in the circumstances of

this case. In my opinion therefore the reference must be rejected. The verdict of the jury must be accepted and the accused convicted of an offence under Clause 2, Section 304, I. P.C., and-he must be sentenced to rigorous imprisonment for a period of seven years.

C.C. Chose, J.

6. I agree.

Patterson, J.

7. I. agree.