

Kaliappan

Vs

State of Tamil Nadu

Criminal Appeal No. 215 of 1976

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

02.08.1976

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave is limited to two questions, namely : (1) what is the nature of the offence, and (2) what should be the punishment to be imposed on the appellant. The incident in which the deceased Samiappa Gounder met with his death, can no longer be disputed in view of the limited questions on which special leave has been granted by this Court. The appellant, who participated in the attack on the deceased, used arrival, MO 3, and the finding of the sessions court as well as the High Court is that the appellant gave a blow on the head of the deceased with the arrival. The injury caused as a result of this blow with the arrival given by the appellant, is injury 5, as stated in the evidence of Dr. Venkataraman. Injury 5 has been described by Dr. Venkataraman as "an oblique incised wound on the left occipital region of the scalp 4 cm x 1 cm x scalp deep". There were also four other injuries caused to the deceased on the scalp as a result of the attack and they were injuries 1 to 4 as given in the deposition of Dr. Venkataraman. These injuries were admittedly caused by lathi blows and the appellant was not responsible for the same. The appellant was convicted under Section 302 of I. P. C. and sentenced to death on the basis of injury 5, caused by him to the deceased and this conviction and sentences of death was confirmed by the High Court. The question is whether the sessions court and the High Court were right in convicting the appellant of the offence under Section 302 of the Indian Penal Code and sentencing him to death.

2. Now if we look at the evidence of Dr. Venkataraman, we find that according to him "injuries 1 to 5 could have been fatal independently but not necessarily". This would mean that injury 5 could have been fatal but it was not necessarily so. It is, therefore, possible that injury 5 alone did not cause the death of the deceased though it was likely to cause such death. On this state of the evidence, we do not think that the sessions court and the High Court were right in convicting the appellant under Sections 302 of the Indian Penal Code. The offence which the appellant appears to have committed is one under Section 304 Part I and we, therefore, alter his conviction from Section 302 to Section 304 Part I and sentence him to rigorous imprisonment for a period of ten years.

3. We accordingly allow the appeal, set aside the sentence of death and sentence the appellant to suffer rigorous imprisonment for 10 years for the offence under Section 304 Part I, Indian Penal Code.

</html