

Rajinder Singh

Vs

State of Punjab

Criminal Appeal No. 30 of 1972

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

28.02.1978

JUDGMENT

FAZAL ALI, J. -

1. In this appeal by special leave the appellant has been convicted under Section 302 I.P.C. and sentenced to imprisonment for life and he has also been convicted under Section 324 I.P.C. and sentenced to R.I. for two years. The prosecution case has been clearly described in the judgment of the High Court and that of the Sessions Judge and it is not necessary for us to repeat the same. Mr. Bahal, appearing for the appellant, raised two points before us. In the first place he submitted that as the appellant was below 16 years at the time the offence was committed, the trial by the Sessions Court was illegal and he should have been tried under the East Punjab Children Act, 1949. Reliance has particularly been placed on Section 63 of the Act. In support of his argument learned counsel has invited our attention to the statement of the accused before the committing court and the Sessions Court, where he has mentioned his age, and to the evidence of the doctor who has said that after examining the appellant he found that he was a boy of about 14 or 16 years. The Sessions Judge has however clearly stated in his judgment that the appellant appeared to him to be a boy of 16 to 18 years. Section 63 applies only where a court is satisfied that the appellant is a child within the meaning of the Act. In the instant case the Sessions Judge was satisfied that the appellant was not a child as contemplated by the provision of East Punjab Children Act, hence the question of his trial under the said Act did not arise at all. It may be pertinent to note that the finding of the learned Judge was not assailed specifically on this point by the appellant before the High Court. For these reasons, therefore, the first point taken by the appellant is overruled.

2. It was then contended that having regard to the circumstances under which the appellant assaulted the deceased, the case of the appellant falls within Section 304, Part II of the Penal Code and does not appear to be a case of murder under Section 302 I.P.C. We have carefully perused the post mortem report, which mentions the injuries sustained by the appellant. He had an incised wound left second intercostal space 1/2 inch to the left of outer border of sternum. The doctor while describing the injury in detail has deposed as follows :

The medial border of upper lobe of left lung was pierced through and through. The pericardium was injured corresponding to injury No. 1 and its cavity was full of dark clotted blood. Both the ventricles were punctured at their upper parts and were empty (left ventricle 4/5 inch and right 1/5 inch).

3. It will thus appear that the injury inflicted by the appellant was a very serious one and was given with very great force on a most vital part of the body viz., the chest. Furthermore, the doctor has

opined that as a result of the injury inflicted by the appellant the left lung was pierced through and through. The doctor is also of the opinion that both the ventricles were punctured and the injury was sufficient to cause death in the ordinary course of nature. In these circumstances, therefore, we think that the case of the appellant squarely falls within the four corners of Section 302 and the Courts were right in convicting the accused under that section. We do not find any force in the appeal, which is accordingly dismissed.

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