

Boya Narasimhudu

Vs

State of Andhra Pradesh

Criminal Appeal No. 193 of 1978

(A.D. Koshal, Baharul Islam JJ)

17.03.1981

JUDGMENT

KOSHAL, J. –

1. This appeal by special leave is limited to the question of the nature of offence and the sentence to be imposed thereon on the sole appellant who has been convicted of an offence under Part I of Section 304 of the Indian Penal Code and sentenced to imprisonment for life by the trial court and High Court.

2. According to the prosecution case the deceased was sleeping on the pial outside his house on the night of August 25, 1974 when the appellant, who is his brother's son, arrived there drunk, went to his house and returned armed with a stick with which he gave a couple of blows in the head region to his sleeping uncle. The two injuries received by the deceased ultimately proved fatal.

3. The trial court was of the opinion that although the appellant had no intention to cause death he had the knowledge that death was likely to result from his act. It was on that account that the appellant was convicted and sentenced as aforesaid.

4. The High Court did not agree with the reasoning of the trial court about the nature of the offence and was of the opinion that the appellant had really committed murder which was an offence punishable under Section 302 of the Code. However, it refused to interfere with the judgment of the trial court for the reason that no appeal against the acquittal under the section had been filed by the State and that the appellant had in any case been awarded the lesser penalty of the law provided for the more serious offence of murder.

5. After hearing learned counsel for the appellant we also find no reason to interfere with the conviction and the sentence. In fact we are in agreement with the opinion of the High Court that the offence really fell under Section 302 of Indian Penal Code. It may be noted that the injuries received by the deceased were sufficient in the ordinary course of nature to cause death. This proposition is not controverted by learned counsel for the appellant whose main contention is that the injuries were not intended and therefore he relies on the fact that the culpable act is said to have been committed during the night when the appellant might not have been able to make out what part of the body of the deceased he was striking with the weapon of the offence. The contention is untenable for the simple reason that the appellant had gone home after seeking the deceased sleeping in the pial and had returned with a stick, obviously to attack his unfortunate uncle. If the appellant was able to sight his victim from a distance before going home and arming himself there is no reason why he could not make out the part of the body of the deceased on which he struck. We have no hesitation,

therefore, in holding that the injuries caused were actually intended, and if that to be so, the requirements of clause Thirdly of Section 300 of the Indian Penal Code are fulfilled, In the view of what has been held in Virsa Singh v. State of Punjab [1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818] the offence is squarely covered by that clause and would amount to nothing less than murder. As it is, we do not think that if the appellant had been convicted of the more serious offence of murder he would deserve the extreme penalty of the law. On that account we do not propose to make any alteration in the impugned judgment and dismiss the appeal.

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