

State of Karnataka

Vs

Shivalingaiah Alias Handigidda

Criminal Appeal No. 83 of 1984

(A. P. Sen, V. B. Eradi JJ)

01.04.1987

ORDER

1. The State of Karnataka has preferred this appeal by way of special leave against the judgment of the Karnataka High Court dated November 8, 1982. By the judgment, the High Court has set aside the order of acquittal recorded of an offence under section 302 of the Indian Penal Code, 1860 and convicted him of having voluntarily caused simple hurt punishable under Section 323. The respondent has been sentenced to undergo rigorous imprisonment for one year.

2. The short question involved in whether the act of respondent falls within clause. Thirdly to Section 300 and therefore he is guilty of culpable homicide amounting to murder punishable under Section 302 of the Indian Penal Code. The gravamen of the charge against the respondent was that after an altercation he suddenly pulled the deceased Giri Gowda by his testicles and squeezed the same as a result of which he fell down unconscious and died almost instantaneously. The testimony of Dr. T. C. Seetharam, Medical Officer, L.F. Hospital, Chennapatna shows that death was as a result of cardiac arrest resulting from shock due to injuries to the testis. The learned Sessions Judge held that the offence made out by the prosecution fell only under Section 323 of the Indian Penal Code and sentenced the respondent to undergo rigorous imprisonment for one year. On appeal, the High Court held that it was difficult to draw an inference that the respondent to undergo rigorous imprisonment for one year. On appeal, the High Court held that it was difficult to draw an inference that the respondent had any intention to kill or murder the deceased Giri Gowda. It observed that the incident took place all of a sudden and on the spur of the moment when the deceased put his hands on the shoulder of the respondent with a view to make him sit down. It accordingly held that the respondent appears to have acted on a sudden impulse without any intention or knowledge that this act of squeezing the testicles of the deceased was likely to cause his death.

3. We have heard counsel for the parties as to the nature of offence and sentence. Agreeing with the High Court, we are inclined to the view that in the facts and circumstances it cannot be said that the respondent had any intention of causing the death of the deceased when he committed the act in question nor could he be attributed with knowledge that such act was likely to cause his death. We wish to make it clear that it cannot be that in all circumstances such an act would not be covered by clause. Thirdly and therefore amount to culpable homicide amounting to murder punishable under Section 304 Part II. It all depends on the facts and circumstances of each case whether the accused has the requisite intention or knowledge. The High Court has brought out the circumstances which show that the respondent acted on a sudden impulse. The High Court was therefore right in its conclusion that the act complained of would not amounting to murder punishable under Section 302 or Section 304 Part II. The question however still remains as to the nature of the offence committed by the respondent. In our opinion, the High Court was not right in its view that the act of squeezing

the testicles of a person would be an offence of voluntarily causing simple hurt punishable under Section 323 of the Indian Penal Code. The testimony of Dr. T. C. Seetharam clearly shows that such act was dangerous to human life. It actually led to the cardiac arrest of the deceased as a result of which he died almost instantaneously. Such an act in the instant case would clearly be covered by clause Thirdly (sic Eighthly) of Section 320 of the Indian Penal Code and therefore amount to grievous hurt punishable under Section 325 of the Indian Penal Code.

4. We accordingly allow the appeal to this extent altering the conviction of the respondent from under Section 323 to one under Section 325 of the Indian Penal Code. The respondent is sentenced to undergo rigorous imprisonment for a period of three years.

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