Joseph

Vs

State of Kerala

Criminal Appeal No. 198 of 1980

(K. Jayachandra Reddy, R. C. Patnaik JJ)

05.02.1992

JUDGMENT

1. This is an appeal under the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 read with S.379 of the Criminal Procedure Code, 1973. The sole appellant was tried by the Sessions Judge, Kottayam for an offence punishable under S. 302, IPC. The learned Sessions Judge convicted him under S. 326, IPC and sentenced him to undergo Rigorous Imprisonment for two years. The State filed an appeal against the acquittal. The accused also preferred an appeal to the High Court against the conviction under S. 326, IPC and sentence of rigorous imprisonment for two years. The High Court held that an offence punishable under S. 302, IPC is clearly made out and accordingly set aside the order of Sessions Court and convicted him for the offence of murder and sentenced him to undergo imprisonment for life thereby allowing the appeal by the State and dismissing the appeal by the accused. Hence the present appeal.

2. The prosecution case is that the accused was having a bunk shop at Peringalam in the Village Poonjar opposite to a toddy shop. There was another small place nearby which was used as a gambling house by the accused. The residents of the locality regularly participated in the gambling. On July 20, 1977 a gambling game was going on at the place of the accused. The deceased, P.W. 3 and some others participated in the game. At about 10 p.m. there was a hot exchange of words between the deceased and the accused over the stake money. P.W. 3 intervened and resolved the dispute. Thereafter the deceased left the gambling place and went to the nearby toddy shop. The accused and others also left the gambling place and they were standing near the bunk shop of the accused. There the accused challenged the deceased by questioning him whether he was courageous enough to go the shop of the accused. The deceased got out of the toddy shop and stood in front of the shop for a few minutes. In the meanwhile the deceased walked towards the accused who was standing there. The accused attacked the deceased with a wooden lathi. He dealt two blows on the head of the deceased. The deceased collapsed on the ground in front of the bunk shop of the accused. The accused dealt a third blow on the deceased but it missed the aim. The accused thereafter left the place with the lathi. P.W. 1 who witnessed the later part of the incident directed P.W. 2 to give intimation to P.W. 10, another brother of the deceased. Thereafter P.W. 10 removed the deceased to the Government Hospital where he was treated for his injuries but his condition was serious and he died on 22-7-77. An intimation was sent to the police. The case was registered. An inquest was held on the dead body. The doctor who conducted the post-mortem examination found lacerated injuries on the head and on internal examination he found fracture to the occipital bone extending to the temporal bone. He also found haemorrhage in the brain. On completion of the investigation the charge-sheet was laid. The prosecution examined fourteen witnesses. Out of them P.Ws. 1 to 4 figured as eye-witnesses. The Sessions Court had no difficulty in accepting their evidence. However, coming to the nature of the offence the learned Sessions Judge took the view

that the offence committed by the accused amounted only to grievous hurt punishable under S. 326 of the IPC. The High Court on the basis of the evidence of the eye-witnesses held that the accused was responsible for causing the injury on the head which proved fatal. Referring to the third clause of S. 300, IPC. the High Court held that the offence committed by the accused amounted to murder inasmuch as the injuries caused by the accused even with the wooden lathi were found to be sufficient in the ordinary course of nature to cause the death.

3. In this appeal the learned counsel for the appellant submits that the intention to cause the injury which was found sufficient to cause the death in the ordinary course of the nature was not established. In support of this submission he relied on the circumstances namely that the whole incident took place because of a trivial incident which resulted in a quarrel and that the weapon used was only a lathi and in the circumstances it cannot be said that the accused intended to cause the death by inflicting that particular injury which objectively was proved by the medical evidence to be sufficient in the ordinary course of nature to cause death. In other words he submits that clause 3 of S. 300, IPC is not attracted in this case. We find considerable force in the submission. The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient at the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the death. In which case the offence committed by him would be culpable homicide not amounting to murder. We accordingly set aside the conviction of the appellant under S. 302, IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under S. 304, Part II, IPC and sentence him to five years R.I.

4. The criminal appeal is disposed of accordingly. Order accordingly.

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