SUPREME COURT OF INDIA

State of Kerala

Vs.

Sasi

(A Anand and K Thomas JJ.)

31.10.1996

ORDER

On 2.11.1990 at about 4.15 p.m., the respondent gave blows to the deceased Kunhuvareed on his head with a bamboo stick. Those blows resulted in fracture of the skull and multiple lacerated wounds on the head with resultant damage to the brain. The deceased died in the hospital on 13.11.1990 at about 3.25 a.m. Case was registered and investigation taken in hand. After completion of the investigation, the respondent was committed to stand trial to the Court of Sessions for an offence under Section 302 IPC. The prosecution examined 20 witnesses including PWs 15, 16 & 17 -the three medical witnesses, and PWs. 1, 2 & 3 as the eye-witnesses. At the trial, however, PW1 & PW2 turned hostile, after admitting the occurrence to have taken place on the date and at the time alleged by the prosecution. The learned Trial Court, after appreciation of evidence and considering the defence documents and the statement of the respondent, found the respondent guilty of an offence under Section 302 IPC and convicted him accordingly. He was sentenced to undergo impisonment for life vide judgment dated 15.11.1991. The respondent's appeal to the High Court partly succeeded and while accepting the genesis of the prosecution case, the High Court altered the conviction from under Section 302 IPC to the one under Section 326 IPC and sentenced the respondent to undergo five years RI vide judgment dated 6.4.1995. The State has filed this appeal against the acquittal of the respondent for an offence under Section 302 IPC by special leave. We have heard learned counsel for the parties. The respondent has not questioned his conviction. He has not filed any S.L.P. A perusal of the evidence on the record clearly establishes that the occurence took place in the manner suggested by the prosecution and that on 2.11.1990 at about 4.15 p.m. at the Toddy shop in the village, the respondent gave blows to the deceased on his heat with the bamboo stick. The evidence also reveals that the deceased was removed to the hospital in seriously injured condition and he remained in coma till he breathed his last on 13.11.1990. The prosecution has, thus, successfully established that it was the respondent who had caused injuries at the head of the deceased on the fateful night. The only question, however, is about the nature of offence.

The trial court while dealing with the nature of offence observed :

"The next question to be considered is as to what is the offence committed by the accused. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull he must, in the absence of any circumstance negativing the

presumpation be deemed to have intended to cause the death of the victim of such bodily injry as is sufficient tocause death. Since the accused gave 3 blows by using MO1 on the head of deceased Kunhuvareed as a result of which the deceased fell down on sustaining fatal injuries on the head and the circumstances indicate that the assault was premeditated and the three blows on the head of deceased were not accidental and the injuries were sufficient in the ordinary course of nature to cause death, the case would squarely fell within the ambit of clause thirdly of Section 300 IPC and the accused murder punishable under Section 302 of the Indian Penal Code.

The High Court, as already noticed, did not disagree with the prosecution case regarding the complicity of the respondent with the crime, however, on the question of the offence, the High Court opined:

"On the evidence, there is no doubt the accused had caused grievous injuries upon the deceased, with MO1. Death of the injured took place nearly two weeks after the incident while he was under treatment. In our view, it is not possible to hold on the materials that the accused had either committed murder or culpable homicide not amounting to murder, but only caused grievous injuries on the deceased punishable under Section 326 IPC."

We find it difficult to subscribe to the view of the High Court. To say the least, the approach of the High Court appears to be totally mistaken and not tenable in law. The evidence led by the prosecution through the statements of PW15 Dr. Sarala Devi, PW17 Dr. Mohanlal, the Neuro Surgeon and Dr. Joseph T. John, PW16, who had performed the post mortem examination on the deceased, un-mistakably shows the seriousness of the injuries inflicted on the deceased. A reference in this connection to injury, recorded as No.22 in the post mortem report, would be relevant. That injury reads thus :

"Underneath and around injuries 9 to 14, the scalp was contused reddish brown involving whole front quadrants. The frontal bones were comminutedly fractured and along with left parietal bone showed a defect of missing bone 10 x 7.0 cm, transversely with lower back corner at the level of top of ear, exposing intact dura underneath covered by dark brown blood clot 0.1-0.3 cm thick. The dura over the frontal lobe of brain was lacerated into a defect 5 x 3.0 cm, exposing the brain underneath. Brain had its frontal and left temporal poles semisolid for a depth of 0.5 cm covered by 0.1-0.2 cm thick reddish brown blood clot. Greenish yellow thin layer of pus over duramater and arachanoid matter. Brain (1260 g) was oedematous and the multiple punctate bleeding in white matter.

The floor of front cranial fossae were comminutedly fractured. Reddish brown infiltration of clotted blood around fracture sites."

According to the medical opinion, the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death. The evidence on the record has established that the respondent gave three blows on the head of the deceased and those blows were intentional and not accidental. The attack was premeditated on a vital part of the body. Keeping in view the damage which it caused and the medical opinion to the effect that the injuries were sufficient in the ordinary course of nature to cause death and that the death was attributable directly to the injuries received by the deceased at the hands of the respondent on 2.11.1990, the case of the respondent would squarely fall within the ambit of Clause 3rdly of Section 300 IPC. The High Court, in our opinion, fell in error in holding, in the face of the evidence on the record that the respondent could be attributed

intention to cause grievous injuries only. The opinion expressed by the trial court was undoubtedly sound. Since, the offence is covered by Clause 3rdly of Section 300 IPC, the respondent was liable to be punished under Section 302 IPC. We, therefore, set aside the findings of the High Court as regards the nature of the offence and hold that the respondent is guilty of an offence of murder punishable under Section 302 IPC and consequently allowing this appeal we restore the judgment of the trial court in that behalf and sentence the respondent to undergo imprisonment for life.

The bail of the respondent are cancelled. He shall be taken into custody to undergo the remaining part of the sentence.