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Crl.A.No. 488 OF 1997
ITEM No.104 Court No. 5 SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.488 OF 1997

PITCHAI Appellant (s)

VERSUS

STATE BY INSPECTOR OF POLICE, VADAMADURAI Respondent (s)

(with office report)

Date : 20/11/2003 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. R Anand Padmanabhan, Adv. for
Mr. Rakesh K Sharma, Adv.

For Respondent (s)Mr. ATM Sampath, Adv.
Ms. TS Shanthi, Adv. for
Mr. PN Ramalingam, Adv.

UPON hearing counsel the Court made the following
O R D E R
Heard the learned counsel for the parties.
The appeal is disposed of in terms of the signed order.

(D.L.Chugh) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.488 OF 1997

PITCHAI Appellant (s)

VERSUS

STATE BY INSPECTOR OF POLICE, VADAMADURAI — Respondent (s)

O R D E R

The above appeal has been filed by Accused No.1 in Sessions Case No.60 of 1989 on the file of the learned Sessions Judge who along with Accused No.2 stood charged respectively for offences punishable under Sections 302 and 326 of the Indian Penal Code. Accused No.1 was charged for having caused the death of one Muniyandi and Accused No.2 was charged for having caused grievous hurt with a sharp stick. The case of the prosecution, as projected through evidence let in, was that the deceased who was on an errand for rat hunting was intercepted by the accused Nos.1 and 2, according to whom the deceased attempted to steal coconut from the garden of which A-1 was watchman. In the process they inflicted injuries and the injury inflicted by A-1 on the deceased ultimately proved to be fatal. On a report being lodged and after completing the investigation and having got the dead body examined by the doctor who conducted the post mortem examination, the charge, as noticed above, was raised against the accused. The accused denied the charges resulting in the trial of the case in which 13 witnesses were examined for the prosecution and 15 documents were said to have been marked. On a consideration of the materials on record the leaned Trial Judge convicted Accused No.1 under Section 304 Part I IPC and while sentenced him for seven years rigorous imprisonment, convicted Accused No.2 under Section 326 IPC imposing on him a sentence of three years rigorous imprisonment, in addition to the payment of fine of Rs.250/- with a default clause therefor.

Aggrieved accused pursued the matter on appeal before the High Court in CA No.974 of 1989. A leaned Single Judge of the High Court on reappreciation of the materials on record thought fit to alter the conviction from Section 304 Part I IPC to one under Section 304 Part II IPC so far as Accused No.1 is concerned and imposed a sentence of three and a half years rigorous imprisonment for the same. So far as the Accused No.2 is concerned, the conviction under Section 326 IPC, though was maintained, sentence was reduced to two years. The learned Judge of High Court while noticing the four Government Orders dated 11.4.90, 23.2.92, 20.2.93 and 23.2.1994 respectively enumerated in paragraph No.10 of the Judgment felt it unnecessary so far as Accused No.2 is concerned to surrender he being entitled to the benefit of remission for almost two years the entire period of sentence imposed on him. So far as Accused No.1 (the present appellant) is concerned, even after allowing such remission under the Government Orders the learned Judge directed that he will have to undergo the unexpired period of one and a half years rigorous imprisonment. Aggrieve by the same, this appeal has been filed.

Heard Mr. R Anand Padmanabhan, learned counsel for the appellant and Mr. ATM Sampath, learned counsel for the respondent.

Mr. R Anand Padmanabhan, learned counsel for the appellant while placing reliance upon the decision of this Court reported in 1987 (2) SCC 498 entitled State of Orissa vs. Bhagban Barik, strenuously contended that the appellant was only discharging his duties as a watchman of the coconut garden and in good faith and under mistake of fact inflicted an injury which, as misfortune would have it resulted in the death of the victim though not instantaneously but on the next day and that too on account of indifference and carelessness on the part of the injured in not getting proper medical treatment and that therefore the appellant ought not to have been convicted and should have been really exonerated from the offence. Learned counsel invited our attention to the relevant portions of the judgments of the courts below in support of his claim. Per contra, Mr. ATM Sampath, learned counsel appearing for the State, with equal vehemence, contended that the decision relied upon will have no application to the facts of the case in hand and that the appellant cannot claim to have acted either in good faith or on any mistake of fact having regard to the serious nature of the injury caused to the victim. Section 79 IPC on which reliance is sought to be placed stipulated that nothing is an office which is done by any person " who is justified by law or who by reason of a mistake of fact and not by reason of mistake of law, in good faith, believes himself to be justifed by law in doing it". Section 79 IPC will have no application unless there is real or supposed legal justification in doing the act complained of and that the same was done with an intention of advancing the law to the best of his judgment exerted in good faith. It has reference to something which needed to be done as being in conformity with law. In substance, the provision has relevance only when though a mistake, one intending to do a lawful act does something which is unlawful and that such mistake is a mistake of fact, which fact if existed or found to be true would have justified in law the act done.

We have carefully considered the submissions of the learned counsel appearing on either side.

There is no mistake of fact as well in this case which could even if existed or found true could warrant or justify in law, the imposition of such a serious injury as found inflicted on the victim. In our view, the High Court was more than considerate and lenient in dealing with the case of the appellant by altering the conviction against him into one under Section 304 Part II IPC and that too with a sentence of three and a half years only. Having regard to explanation 2 to Section 299 IPC it is not given to the appellant to take shelter under a claim that had proper medical attention and treatment been given the victim could not have died. The overwhelming materials on record sufficiently substantiated the guilt of the appellant for the offence for which he ultimately stood convicted.

The appeal has no merit and shall stand dismissed. Keeping in view the orders of remission noticed by the very learned Judge in the High Court and the observations that if at all the appellant should undergo only a period of one and a half years rigorous imprisonment and the fact that he has been taken into custody and was in jail, till released on bail by this Court, subsequently, the question as to whether he would have by that time served the remaining period one and a half years of sentence may be considered by the concerned Police Authorities before taking him to custody by the dismissal of this appeal. If the real position is that he had served so there is no need for the appellant being taken afresh into custody but in case any part of such sentence remaining still unserved he shall be taken into custody for serving the balance of sentence . With the above observations this appeal stands disposed of finally.

.....J (DORAISWAMY RAJU)

.....J (ARIJIT PASAYAT)

New Delhi,
November 20, 2003