

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 546 OF 2005

EZHILAN @ ESHILARASAN
 PPELLANT(S)

.....

A

:VERSUS:

STATE REPRESENTED BY INSPECTOR OF POLICE
 ESPONDENT(S)

.....

R

O R D E R

The appellant herein and the deceased are related. PW-1 Babu alias Mani is the nephew of the deceased. He is also the brother-in-law of the deceased. PW-2 was at an arrack shop and was consuming arrack. He saw the appellant as also the deceased talking to each other. PW-3 also noticed them. However, a sudden quarrel took place between the appellant and the deceased. PW-3 informed PW-1 thereabout who was sitting in the arrack shop whereupon he came out and found that the appellant was attacking the deceased with broken Soda bottle.

The injuries said to have been suffered by the deceased are as under:

"1. V shaped wound, upper arm measuring 4 cms and lower arm measuring 6 cms present area left cheek. The lower end is pointing downwards and entered neck on left side upto a depth of

4 cms. On dissection the injury has cut internal jugular vein on left side with bruising of surrounding tissues.

2. Incised wound 4 cms x 2 cms obliquely placed present over left side of neck near sterno clavicular joint. The depth of the injury is 3 cms and lies behind left sterno clavicular joint."

The question which arises for consideration in this appeal is as to whether

2

in the fact situation obtaining herein, which has duly been proved by the prosecution,

the appellant can be said to have committed an offence punishable under Section 302

read with Section 34 IPC or not. It is not in dispute, although it may not be very

relevant, that the appellant was under the influence of liquor. It has been brought on

record that they used to quarrel often.

The quarrel between the appellant and the deceased leading to the incident

was, however, not premeditated. It took place all of a sudden in the course of

exchange of words. Indisputably the appellant was not armed with any weapon.

When they were standing in front of the arrack shop under the influence of arrack

he is said to have caused the death of the deceased by inflicting the aforementioned

injuries by a broken Soda bottle.

Learned counsel for the appellant submits that in the aforementioned

situation, Exception 4 of Section 300 of the IPC is attracted. The said provision reads

as under:

"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

However, in our opinion the said provision has no application in this case as

there is no finding that the offence was committed in the heat of passion.

Furthermore, in our opinion, clause 'thirdly' to Section 300 IPC is squarely attracted

in the instant case inasmuch as bodily injuries inflicted upon the deceased were such

so as to lead to a conclusion that he knew that the injuries inflicted by him were

3

likely to cause death. The number of injuries are two. They were on the vital part of

the body of the deceased and thus it cannot be said that the aforementioned injuries

were not likely to cause death. But at the same time the appellant had no intention to

cause death.

We are, therefore, of the opinion that the appellant is guilty for the

commission of the offence under Section 304 Part I of IPC and not under Part II

thereof. We hold accordingly. We, therefore, in substitution of the sentence imposed

by the learned Sessions Judge as affirmed by the High Court, direct th

at the

appellant shall suffer a rigorous imprisonment for 10 years. He shall also be liable to pay the fine as directed by the learned Sessions Judge.

The appeal is allowed in part to the extent mentioned hereinbefore.

.....J
(S.B. SINHA)

.....J
(DALVEER BHANDARI)

NEW DELHI,
JULY 11, 2006.

4

ITEM NO.108

COURT NO.8

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO. 546 OF 2005

EZHILAN @ ESHILARASAN

Appellant (s)

VERSUS

STATE REP. BY INSPECTOR OF POLICE

Respondent(s)

(With application for exemption from filing O.T. and with office report)

Date: 11/07/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. B. Sridhar,Adv.

For Respondent(s) Mr. V.G. Pragasam,Adv.

UPON hearing counsel the Court made the following

O R D E R

llowed in Heard the learned counsel for the parties. The appeal is a

part to the extent mentioned in the signed order.

AJ) (A.S. BISHT)

(PUSHAP LATA BHARDW

COURT MASTER

COURT MASTER

[Signed order is placed on the file]