

PETITIONER:
PIRTHI

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 08/10/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 AIR 1582 1994 SCC Supl. (1) 498
JT 1993 Supl. 143 1993 SCALE (4) 35

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- Special leave granted.

2. The appellant was tried for an offence punishable under Section 302 IPC and has been ultimately found guilty under Section 304 Part II IPC and sentenced to undergo four years' RI and to pay a fine of Rs 10,000 in default of payment of which to further undergo one year's RI.

3. The facts of the prosecution case are that on April 2, 1986 at about 2 p.m. the appellant came in front of the house of Jia Lal, deceased and there was a quarrel and the appellant kicked the deceased on his testicles as a result of which the deceased fell down. The appellant again kicked on the testicles of the deceased. The wife and daughter of the deceased intervened and they removed the injured to the house and later he was shifted to the hospital only on April 4, 1986. The doctor found a diffused swelling on the scrotum and penis and skin over the scrotum and penis was found to be blackening and gangrenous and he was treated in the hospital. Because of the gangrene the deceased died on April 5, 1986. A case was registered under Section 302 IPC. Dr Naveen Sabharwal, PW 8 conducted the postmortem and he opined that the death was due to toxemia because of the gangrene which could be the result of the injury to the testicles. PW 6, another doctor again gave a medical opinion that the duration between injury and the death could not be given because the cause of death was toxemia due to gangrene. The doctor also admitted that because of the lack of immediate medical help, the gangrene developed.

4. Both the courts below have accepted the prosecution case that the appellant kicked the deceased on the testicles. The High Court held that by giving such kicks, the appellant had knowledge that he was likely to cause the death and accordingly convicted him under Section 304 Part II IPC.

5. Having regard to the medical opinion, admittedly the

injury to the testicles was not the direct cause of death. No treatment was given for two days and it is only on April 4, 1986 that the deceased was admitted in the hospital. but, unfortunately, in the meanwhile gangrene developed. Under the circumstances the offence only amounts to one punishable under Section 323 PC. In the result, the conviction of the appellant under Section 304 Part 11 IPC and the sentence of four years' RI awarded thereunder are set aside. Instead he is convicted under Section 323 IPC and sentenced to undergo seven months' RI. the sentence of fine with default clause and the direction that the whole amount should be paid to the heirs of the deceased, are confirmed. Subject to the above modification of sentence, the appeal is disposed of.

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