
(1948) 10 MAD CK 0016

Madras High Court

Case No: None

Public Prosecutor

APPELLANT

Vs

Nagappa Pujary and
Others

RESPONDENT

Date of Decision: Oct. 5, 1948

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 335

Citation: AIR 1949 Mad 460 : (1949) CriLJ 656

Hon'ble Judges: Subba Rao, J; Mack, J

Bench: Division Bench

Judgement

Subba Rao, J.

This is an appeal by the Crown against the acquittal of accused I to 3 u/s 302, Penal Code. The learned Public Prosecutor

argued that on the facts accused I should have been convicted under Part 1 of Section 304. But on the facts as found by us he rightly conceded

that the offence should fall more appropriately u/s 335, There is no particular reason why a differentiation should be made between accused 1 and

accused 2 and 3. They combined together and beat the deceased, and the evidence does not show that accused 1 gave any particular blows which

caused the death of the deceased. Indeed the evidence shows that he beat the deceased on the head whereas the medical evidence shows that the

deceased did not die of the wounds on the head. Further it is also in evidence that the rice-pounder M. O. 3 was broken into two pieces, and it is

impossible to say who used the other bit and with which bit the major wounds were caused. We therefore modify the sentence of accused 1 also

and convict him u/s 335, Penal Code, and sentence him to the period already undergone.

2. Before we close the judgment, it is necessary to make an observation in regard to the view expressed by the Sessions Judge on the scope of

Section 8, Madras borstal Schools Act. The learned Judge observed as follows:

Accused 1 is a lad who, according to his own statement, is aged 16 years, and according to the medical evidence is aged between 16 and 18.

There is no evidence that he has criminal tendencies or bad associations. He evidently committed the offence under provocation and in the heat of

passion and not on account of any criminal tendencies. I do not consider, therefore, that Section 8 of the Madras borstal Schools Act can be

properly applied to him.

The condition precedent to the application of Section 8 is that the adolescent offender should have criminal habits or tendencies or association with

persons of bad character. If the learned Judge's interpretation of that section were to be accepted, it would mean that a person who has no

criminal tendencies would be sent to the ordinary jail whereas a person with criminal tendencies" will be sent to the borstal School. This

interpretation would defeat the object of the Act itself. If a person without criminal tendencies is sent to a jail there is a greater danger of his

contamination by his association with hardened criminals, whereas the object of the Act is to send such people to a borstal School, so that they

may have good training and come out of it to become useful citizens. The words ""criminal tendencies"" should not be given a narrow interpretation.

If a boy had no criminal tendencies he would not be convicted of any crime at all. The fact that a boy is convicted for one offence or other under

the Indian Penal Code shows in the view of the Court convicting him that he has criminal tendencies. We would interpret the section to mean that

whenever an adolescent was convicted of an offence ordinarily he should be given the advantage of being put in the borstal school so that by long

association and training he would come out after the termination of the stay as a useful citizen of the country. The appeal is dismissed.

3. Mack J. ½ I should like to add a word while in substantial agreement with my learned brother about the scope of Section 8 , Madras borstal

Schools Act. I share his opinion that there has been a tendency to narrow down the scope of the Act to adolescents who have been shown to have

previous criminal tendencies or bad associations. A criminal tendency does not manifest itself only in acts involving dishonesty such as theft or

cheating. A person who, owing to lack of self-control or as the result of his environment, is unable to restrain himself and commits an offence of

either grievous hurt or homicide by using a deadly weapon without regard to consequences exhibits a criminal tendency just as much as a person

who steals. The alternative to applying the borstal Schools Act to cases such as these, as my learned brother has said, is to send him for a long

period to an ordinary jail. It is difficult to lay down hard and fast conditions as to the type of adolescents who should be sent to a borstal school.

We can think of no cases in which an adolescent should be sent for a long period to an ordinary jail in which he cannot with better advantage to

himself and the community at large be sent to a borstal institution.