

CASE NO.:
Appeal (crl.) 534 of 2008

PETITIONER:
Stanly Moses

RESPONDENT:
State of Tamil Nadu

DATE OF JUDGMENT: 14/03/2008

BENCH:
CJI K G Balakrishnan & R V Raveendran

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.534 OF 2008
(Arising out of S.L.P. [CRL.] No.5137 of 2006)

Exemption from filing O.T. granted. Delay condoned. Leave granted. Heard learned counsel for the appellant and learned senior counsel for the State.

2. The appellant was convicted by Principal Sessions Judge, Kanyakumari Division at Nagercoil by judgment dated 5.10.1998 for offences punishable under sections 302 and 341 of the Indian Penal Code, and sentenced to undergo life imprisonment (section 302 IPC) and one month's RI (section 341 IPC). The appeal filed by the appellant challenging the said judgment was dismissed by the Madras High Court by its judgment dated 7.1.2003, thereby confirming the conviction and sentence.

3. The prosecution case was that the deceased John Reghu was learning auto driving from his friend PW-4 \026 Selvan Daniel. The appellant Stanly Moses took on hire the autorickshaw owned by PW 4. When PW 4 demanded the auto rickshaw hire charges

from the appellant, the deceased John Reghu supported PW 4 and asked the appellant to pay the hire charges to PW 4. The appellant objected to it and there was a quarrel between the deceased and the appellant. On the date of the incident (27.8.1996) the appellant went to the house of the deceased and inquired whether the deceased was at home. PW-1, the mother of the deceased, stated that he was not at home. The appellant went away making threats against the deceased. Later, on the same day, appellant met the deceased and there ensued a quarrel between them and the appellant stabbed the deceased who died as a result of the injury sustained. PW1 (mother of the deceased) and PW2 (sister of the deceased) were the two eye witnesses who supported the prosecution case. Their evidence was believed by the Sessions Court and the High Court. We find no reason to disbelieve their evidence as to what transpired on that day or the finding of guilt recorded by the courts below.

4. Learned counsel for the appellant contended that the quarrel between the appellant and the deceased was over a petty issue and was of a sudden nature and the appellant has caused only one injury on the deceased and therefore the offence did not come within the purview of section 302 IPC. Learned senior counsel appearing for the State, on the other hand, contended that the appellant had caused the death of the deceased with pre-meditation and therefore the offence will fall under section 302 IPC.

5. The prosecution evidence shows that there was a quarrel over a petty issue between the appellant and the deceased. The incident happened on a public road. The post mortem conducted on the deceased showed only one stab injury on the deceased.

There is no dispute as to the nature of the quarrel between the appellant and the deceased or about the fact that there was only one injury on the deceased. On considering the entire facts and circumstances, we are of the view that the culpable homicide by the appellant did not amount to murder, as exception 4 to section 300 IPC was attracted and that the offence was punishable only under section 304 Part I of IPC and not section 302 IPC. Consequently, the conviction of the appellant under section 302 IPC is set aside and instead he is found guilty of offence punishable under section 304 Part I and is sentenced to undergo ten years' rigorous imprisonment. The conviction and sentence under section 341 IPC remain undisturbed.

6. The appeal is disposed of accordingly, modifying the sentence to the extent mentioned above.