CASE NO.:
Appeal (crl.) 1068 of 2005

PETITIONER:
THANKACHAN

RESPONDENT:
STATE OF KERALA

DATE OF JUDGMENT: 24/08/2005

BENCH:
B.P. SINGH & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.) No.1540/2005)

Delay condoned.

Special Leave granted.

This is an unfortunate case in which the appellant has been sentenced to undergo life imprisonment for committing the offence punishable under Section 302 IPC. The facts relevant for the disposal of this appeal may be noticed. It is not disputed that on 22.3.1999 at about 10.30 PM, the accused came home in a drunken state and when his wife (PW-2) served food, he threw away the food and started quarreling with his wife. In that process, the daughter (PW-3) of the appellant and his son (deceased) who were asleep woke up. His son attempted to intervene to save his mother.

The appellant is said to have picked up a chopper and inflicted a cut injury on his son on the back of the left leg below the knee. On an alarm being raised, several villagers assembled but the appellant prevented them from entering his house being in an inebriated state. It appears that later his son was taken to the hospital. The medical evidence discloses that the injury caused his death on account of excessive bleeding.

In view of these facts, the question is whether the appellant is guilty of the offence punishable under Section 302 IPC.

Learned counsel for the appellant submits that on the basis of the findings of fact recorded by the courts below, an offence punishable under Section 302 IPC is not made out and at best the appellant may be guilty of offence punishable under Section 304 Part II IPC.

Counsel for the State submitted that the medical evidence does establish that the death was the result of the injury caused to the deceased. Had the appellant permitted the villagers to intervene and take the injured to the hospital in time, perhaps his life may have been saved because the medical evidence indicates that the deceased died of excessive bleeding on account of damage to a vital artery.

The question, therefore, which arises for our consideration is whether the appellant inflicted the injury with the intention of causing death of the deceased. Counsel for the State fairly submits that he is not in a position to submit on the facts of this case that the appellant intended to inflict any injury to cause the death of his son.

The next question is whether the infliction of injury was with the intention of causing such bodily injury as the appellant knew would likely cause the death of his son. Here again, the facts disclose that he did not have such an intention, nor can we find any intention on the part of the appellant of causing bodily injury sufficient in the ordinary course of nature to cause death. We are, therefore, of the view that the offence committed is not an offence punishable under Section 302 IPC. However, it cannot be denied that the offence would fall under Section 304 IPC because even though the appellant inflicted injury without the intention of causing death, he knew that the injury caused with a weapon like a chopper may cause such injury as is likely to cause death. We, therefore, find that the offence committed by the appellant is

one which is punishable under Section 304 Part II IPC.

Having regard to the facts and circumstances of the case, we partly allow the appeal and set aside the judgment and order of the High Court of Kerala at Ernakulam dt.21.5.2003 in Crl.A.No.204/2001 to the extent that the conviction of the appellant under Section 302 IPC is set aside and instead the appellant is found guilty of the offence under Section 304 Part II IPC. Keeping in view the facts and circumstances of the case and the manner in which the appellant behaved, a deterrent sentence is called for. We accordingly sentence him to undergo ten years' rigorous imprisonment under Section 304 Part II IPC.

This appeal is allowed to the extent indicated above.