

CASE NO.:
Appeal (crl.) 79 of 2006

PETITIONER:
CHINNATHAMAN

RESPONDENT:
STATE REP. BY INSPECTOR OF POLICE

DATE OF JUDGMENT: 13/12/2007

BENCH:
C.K. THAKKER & J.M. PANCHAL

JUDGMENT:
J U D G M E N T

J.M. PANCHAL, J.

1. This appeal is directed against the judgment dated 28th March, 2005 rendered by the High Court of Judicature at Madras in Criminal Appeal No.648 of 1997, by which, judgment dated February 14, 1997 passed by learned First Additional Sessions Judge, Coimbatore in Sessions Case No.63 of 1996, convicting the appellant under Section 302 of the Indian Penal Code (for short \021the Code\022) and sentencing him to R.I. for life, is confirmed.

2. The facts emerging from the record of the case are as under:

The appellant is a resident of village Thirumalainaickenpalayam. The name of his younger brother is Dorai @ Nataraj, who was also residing in the same village at the relevant time. The elder daughter of Nataraj was going to Pioneer Mill School for studies. She had an affair with one Kirshnamurthy, who was a teacher in the school. Therefore, Mr. Dorai vacated his house situated in village and shifted his family to a house located in the garden. He also stopped Punitha from attending the school. Punitha, however, eloped with her teacher and, therefore, a missing report was lodged by Dorai @ Nataraj with Periyanaickenpalayam Police Station. The appellant came to know that his uncle\022s grandson Maruthachalam and his sister\022s son Chandran had facilitated elopement of Punitha with her teacher and, therefore, scolded both of them. The incident in question took place on April 27, 1994. On the date of incident at about 10.00 AM the appellant was repairing the leakage in the pipe fitted near the well situated in his field. Maruthachalam with his brother Senthil Kumar approached the appellant and asked him to give bitterguard. The appellant refused to give bitterguard saying that they had defamed his family by helping Punitha to elope with her teacher. Thereupon a verbal altercation took place. The appellant picked up aruval (sickle) lying on the ground and caused injuries on the neck of Maruthachalam. Thereupon Senthil Kumar raised shouts as result of which Thiru Ramasamy, the father of Maruthachalam, who was working in his field rushed at the place of incident. The appellant after causing injuries to Maruthachalam left his field and went to village Administrative Officer with the sickle. The village Administrative Officer recorded the statement of the appellant and took him to Periyanaickenpalayam Police Station with sickle. At the said police station, Thiru Jayabalan was discharging duties as sub-inspector. On the basis of the statement made by the appellant before the village Administrative Officer, the sub-inspector registered an offence

punishable under Section 302 of the Code against the appellant and commenced investigation. The police officer went to the place of incident and seized incriminating articles under a panchnama. The dead body of the deceased was sent to the hospital for autopsy. The police officer also recorded the statements of those persons who were found to be conversant with the facts of the case. The incriminating articles seized were sent to forensic science laboratory for analysis. On completion of investigation the appellant was chargesheeted for commission of offence punishable under Section 302 IPC in the court of learned Judicial Magistrate Court No.VI Coimbatore. As the offence punishable under Section 302 IPC is exclusively triable by court of session, the case was committed to the court of learned Additional Sessions Judge, Coimbatore for trial.

3. The learned Sessions Judge framed charge against the appellant for commission of offence punishable under Section 302 IPC. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined 12 witnesses to prove its case against the appellant and also produced necessary documentary evidence.

4. After recording of the evidence of prosecution witnesses was over, the learned judge explained to the appellant the circumstances appearing against him in the evidence of the prosecution and recorded his statement under Section 313 of the Code of Criminal Procedure. In his further statement, the case of the appellant was that of total denial. He did not examine any witness in his defence.

5. On appreciation of evidence adduced by the prosecution the learned judge held that it was proved that the deceased had died a homicidal death. After placing reliance on the testimony of eye-witnesses the learned judge concluded that the appellant was the author of injuries sustained by the deceased. The learned judge thereafter considered the nature of the offence committed by the appellant. After taking into consideration the facts of the case and the provisions of Section 300 IPC, the learned judge concluded that the appellant had committed an offence punishable under Section 302 IPC. Therefore, he convicted the appellant under Section 302 IPC and imposed sentence of R.I. for life vide judgment dated February 14, 1997. Feeling aggrieved, the appellant preferred an appeal before the High court of Judicature at Madras. The Division Bench of the High Court has dismissed the appeal by its Judgment dated March 28, 2005 giving rise to the instant appeal by special leave.

6. This Court has heard the learned counsel for the parties and considered the evidence on record.

7. The fact that the deceased died a homicidal death is not in dispute before this Court. The medical officer who had performed autopsy on the dead body of the deceased has mentioned in detail the injuries noticed by him, in his substantive evidence before the court. Eye-witness Senthil Kumar has stated in his testimony that the appellant had caused injuries on the neck of the deceased by means of a sickle. The autopsy report also mentions in detail the injuries sustained by the deceased. It is nobody's case that the injuries found on the dead body of the deceased were self inflicted. Therefore, the fact that the deceased died a homicidal death stands proved beyond pale of doubt.

8. The testimony of eye-witness Senthil Kumar would indicate that on the day of the incident the deceased in his company had gone to the field of the appellant and had demanded bitterguard. According to the said witness because of the elopement of Punitha with her teacher, the appellant was annoyed and had, therefore, refused to give bitterguard saying that they had defamed his family. What is stated by the said witness is that the deceased had thereupon asked the appellant to talk in a decent manner and had hardly turned his back to leave the field of the appellant when the appellant had delivered a blow with sickle on the neck of the deceased. Though this witness was cross-examined at length nothing substantial could be brought on record which would cast a doubt on his assertion that the appellant was the author of the injuries sustained by the deceased. Similarly, another witness Thiru Ramasami has also deposed that on the day of incident he had seen the deceased going towards the field of the appellant in the company of Senthil Kumar and had asked the deceased as to where he was going. According to this witness thereupon the deceased had informed the witness that he was going to the field of the appellant to get bitterguard. What is asserted by the witness is that he had advised the deceased not to go to the field of the appellant as the appellant was nurturing a feeling that they had helped Punitha to elope with her teacher. The witness has further stated that the deceased had stated that they would come back if the appellant was not inclined to give bitterguard. The witness has also stated that he had heard altercation taking place between the appellant and the deceased but was not able to follow the same as he was at a little distance. What is claimed by the witness is that he had seen the appellant delivering blow to the deceased and that he had gone to the field of the appellant to help his injured son who was bleeding profusely. The witness has mentioned that the people who were in the nearby fields, had gathered and thereafter he had gone to the police station where he had learnt that the appellant had already lodged a complaint against himself.

9. This witness is also cross-examined in detail, but nothing could be brought on record to impeach his credibility. This witness stands fully corroborated in material particulars by the testimony of witness Senthil Kumar. This Court finds that the Sessions Court and High Court were justified in holding that the appellant was the author of the injuries sustained by the deceased.

10. This brings the court to consider the question as to which offence is committed by the appellant. Admittedly, the incident had taken place in the field/garden belonging to the appellant, where he was engaged in his farming activities. From the evidence led by the prosecution it is evident that the deceased, in the company of witness Senthil Kumar had gone to the field of the appellant to get bitterguard though they were warned not to do so by the father of the deceased. In spite of knowing that the appellant was nurturing a feeling that the deceased and his own sister's son had facilitated elopement of Punitha with her teacher, the deceased in the company of Senthil Kumar had gone to the field of the appellant on the pretext of getting bitterguard. The testimony of the father of the deceased establishes that his deceased son, in the company of witness Senthil Kumar had stayed in the field of the appellant for about 15 minutes and that there was an altercation between the appellant and the deceased. The appellant never knew and anticipated that the deceased would

enter his field nor had prepared himself in advance to attack the deceased. Thus there was no premeditation or pre-plan on the part of the appellant, to cause the death of the deceased. Though the appellant is senior in age to the deceased, the deceased had advised the appellant to behave nicely without rhyme or reason, when the appellant had refused to part with bitterguard saying that the deceased and others had disgraced his family by facilitating elopement of Punitha with her teacher. It is not the case of the prosecution that on seeing that the deceased was entering his field in the company of Senthil Kumar, the appellant had straightway attacked him. The evidence led by the prosecution clearly establishes that after verbal duel, which had lasted for pretty long time, the appellant had picked up a sickle which is an agricultural implement, lying on the ground and delivered a blow on the neck of the deceased. By entering the field of the appellant on the pretext of getting bitterguard, though he was knowing fully well that the appellant was nurturing a feeling that he had played a role in the elopement of Punitha with her teacher as well as engaging himself in an altercation with the appellant, and advising the appellant to behave the deceased had offered grave and sudden provocation to the appellant as a result of which the appellant, in the heat of the moment had delivered a blow with sickle to the deceased. The medical officer who had performed autopsy on the dead body of the deceased has not stated that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death. It is not the case of the prosecution that the appellant had acted cruelly, in the sense that he had delivered successive blows to the deceased. There was sufficient time and opportunity to the appellant to give repeated blows. It is not the case of the prosecution that the appellant wanted to deliver other blows and that he was prevented from doing so, by any person. So, there is reasonable ground to believe that after giving the blow, the appellant had stopped and not acted cruelly. As noticed earlier, the appellant was doing his work and was not waiting for the deceased to come. On the facts and in the circumstances of the case, this Court is of the opinion that Exception 1 to Section 300 IPC would apply to the facts of the case and the offence committed by the appellant would be one punishable under Section 304 IPC. There is nothing on record to indicate that the appellant had committed culpable homicide amounting to murder by causing death of the deceased with the intention of causing death of the deceased or of causing such bodily injury as was likely to cause his death. Therefore, the provisions of Part II of Section 304 IPC would apply to the facts of the case on hand. Thus, the appeal will have to be allowed by converting the conviction of the appellant under Section 302 IPC to one punishable under Section 304 Part II IPC. This Court has considered the submissions advanced at the bar for the purpose of imposition of sentence on the appellant for commission of offence punishable under Section 304 Part II IPC. As held earlier there was no pre-meditation or pre plan on the part of the appellant to cause death of the deceased, and the occurrence had taken place when the deceased, with another had entered the field of the appellant and engaged himself in an altercation with the appellant when the appellant had refused to part with bitterguard. Having regard to the attending circumstances in which the incident had taken place, this Court is of the opinion that the interest of justice would be served if the appellant is sentenced to rigorous imprisonment for five years for commission of offence punishable under Section 304 Part II IPC.

11. For the foregoing reasons, the appeal partly succeeds. The judgment of the High Court of Judicature at Madras dated March 28, 2005 rendered in Criminal Appeal No.648 of 1997, confirming the conviction of the appellant under Section 302 IPC and sentence of life imprisonment recorded by the learned First Additional sessions Judge, Coimbatore vide judgment dated February 14, 1997, delivered in Sessions Case NO.63 of 1996, is set aside. Instead the appellant is convicted for commission of an offence punishable under Section 304 Part II IPC for the said offence. The appellant is sentenced to undergo rigorous imprisonment for five years and a fine of Rs.5,000/-, in default, simple imprisonment for one year. The appeal accordingly stands disposed of.