

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 271 OF 2009
(Arising out of S.L.P. (Crl.) No. 4916 of 2007)

Chinnaponnu

.....Appellant

Versus

State of Tamil Nadu

....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court, Madurai Bench, dismissing the appeal filed by the appellant. Appellant was held guilty of offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo rigorous imprisonment for seven years by learned Principal Judge, Dindigul.

3. The factual position need not be gone into in detail in view of order proposed to be passed.

4. The accused faced trial for alleged commission of offence punishable under Section 302 IPC. It was the prosecution version that in the course of sudden quarrel, the accused attacked Lakshmi (hereinafter referred to as the 'deceased') who was stated to be the second wife of one Samuvel. On 10.12.1994 the occurrence occurred. The accused faced trial and as noted above was convicted by the trial court. The appeal before the High Court was admitted considering the various grounds of challenge raised by the appellant. It appears from the impugned order of the High Court that the appellant's counsel did not appear when the matter was taken up and after hearing learned Additional Prosecutor, the appeal was disposed of.

5. It was pointed out learned counsel for the appellant that because of various difficulties the appellant's counsel could not appear and more particularly neither the appellant nor his counsel had any knowledge that the matter was to be taken up before the Madurai Bench of the High Court.

6. Learned counsel for the respondent-State on the other hand submitted that the appellant and her counsel ought to have been more vigilant.

7. While issuing notice on 23.7.2007, it was indicated that the matter may be remitted for fresh hearing because the appellant was not represented when the matter was taken up by the Madurai Bench of the Madras High Court.

8. Considering the difficulties highlighted by the appellant to explain non-appearance of the counsel we are satisfied that this is a fit case where the High Court should re-hear the matter.

9. We have not expressed any opinion on the merits of the case. We set aside the impugned judgment and remit the matter to the High Court for fresh hearing.

10. The appeal is allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

New Delhi,
February 11, 2009

.....J.
(ASOK KUMAR GANGULY)