

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1399 OF 2004

Ramachami

..... Appellant

VERSUS

State rep. By State Prosecutor

..... Respondent

J U D G M E N T

DR.ARIJIT PASAYAT,J.

1. **Heard learned counsel for the parties.**

2. **Challenge in this appeal is to the judgment of the Division Bench of the Kerala High Court upholding the conviction of the appellant for offences punishable under Sections 392 and 302 of the Indian Penal Code, 1860 (for short 'IPC'). He faced trial for offence punishable under Section**

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324 IPC, but he was found to be not guilty of that charge. Life imprisonment and fine of Rs.10,000 were imposed. It was directed that in case the fine was collected, the same was to be paid to the widow of Kuttappan (hereinafter referred to as 'the deceased').

3. The prosecution version essentially rested on circumstances. The trial court found that the circumstances were sufficient to hold the accused guilty. Accordingly, conviction, as noted above, was recorded. In appeal, the High Court did not find any substance in the plea of the appellant and upheld the conviction.

4. In support of the appeal, learned counsel for the appellant submitted that the prosecution has not proved that the appellant was, at any point of time, employed at the hotel and present case is one where the wrong person has been picked up and has been convicted. Alternatively, it was submitted that an offence under Section 302 IPC is not made out.

5. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.

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6. The circumstances, which were pressed into service by the prosecution to connect the accused with the offences, are as follows :

- (i) the deceased Kuttappan and the accused Ramachamy used to sleep in the hotel itself in the night and on 3.2.1998 in the night they two were alone in the hotel (the evidence of PW1, PW2 and PW3).**
- (ii) The deceased used to keep his money in the pocket of his brief and this fact was known to the other inmates of the hotel, including the accused (the version of PW1 and PW2).**
- (iii) On 4.2.1998 early in the morning by 6 O'clock when PW1 and PW2 reached the hotel as usual for work, they saw Kuttappan lying down sustaining injuries on the floor of the hotel near the cash counter (the deposition of PW1 and PW2).**
- (iv) The accused who was along with the deceased in the hotel on the previous night was not seen anywhere near there and he had been absconding since then till his arrest (evidence of PW1, PW2 and PW3).**

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- (v) the police were able to recover M.O.I. (the wooden stick**

allegedly used for beating the deceased Kuttappan) from a particular place in the hotel premises on the basis of the statement of the accused while he was in custody (the evidence of PW1, PW2 and PW3 and PW12).

7. The circumstances clearly establish that the accused was employed in the hotel and used to sleep in the hotel and on the night of occurrence, both the deceased and the accused were alone in the hotel. The evidence of PW1, PW2 and PW3 in this regard are clear, cogent and credible. Additionally, the accused and the deceased were last seen together on the previous night. The appellant was arrested long after the incident, i.e., on 29.11.1998 and was absconding during the aforesaid period. The circumstances, according to us, are sufficient to hold the accused guilty.

8. However, considering nature of the injuries, we are of the view that the appropriate conviction under Section 304 Part II IPC and custodial sentence of 8 years would meet the ends of justice. It is stated that the appellant has already suffered custody of more than 7½ years.

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9. So far as the conviction under Section 392 IPC and the sentence imposed are concerned, there is no infirmity therein to warrant interference. Both the sentences in respect of Section 304 Part II IPC and Section 392 IPC shall run concurrently.

10. The appeal is allowed to the aforesaid extent.

.....J.
[DR. ARIJIT PASAYAT]

.....J.
[C.K. THAKKER]

.....J.
[LOKESHWAR SINGH PANTA]

NEW DELHI
October 22,2008.