

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.221 OF 2002

Alagappan @ Murugan & Anr.

...Appellant(s)

Versus

State by Public Prosecutor, Madras

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

The appellants were tried for offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 [for short, “the I.P.C.”] on the charge of having committed murder of Gopal on 18.5.1991. The trial court returned the finding of not guilty and acquitted the appellants. The High Court allowed the appeal preferred by the State of Tamil Nadu and convicted the appellants under Section 302 read with Section 34 I.P.C. and sentenced each one of them to undergo imprisonment for life. Hence, this appeal.

The prosecution case was supported by Thangamuthu [P.W.1], Kannupillai [P.W.2], Pachiammal [P.W.3] and Boopathy [P.W.4], all of them claimed to be eye-witnesses to the occurrence. Their evidence is corroborated by the medical evidence. Therefore, the trial court was not justified in disbelieving the eye-witnesses and the judgment and order of acquittal passed by it suffered from the vice of perversity and the High Court rightly found them guilty.

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The question, which remains to be considered, is whether the High Court was justified in convicting the appellants under Section 302 read with Section 34 I.P.C. In his statement, Dr. Suryamurthy [P.W.7], who conducted post mortem, gave out that the deceased appears to have died of haemorrhage due to injuries to the major blood vessels of the left arm. Therefore, the appellants could not have been convicted under Section 302 I.P.C. At the highest, their case would be covered by Part-II of Section 304 I.P.C.

Learned counsel appearing on behalf of the appellants submitted that the accused persons have remained in custody for a period of about one year. In view of the nature of injury and taking into consideration the totality of the circumstances, we are of the view that ends of justice would be met in case the sentence of imprisonment awarded against the appellants is reduced to the period already undergone by them.

Accordingly, the appeal is allowed in-part, conviction of the appellants under Section 302 read with Section 34 I.P.C. is set aside. They are convicted under Section 304 Part-II I.P.C. and sentenced to the period already undergone by them.

The appellants, who are on bail, are discharged from the liability of bail bonds.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

New Delhi,
April 30, 2009.