



Non-Reportable

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

CRIMINAL APPEAL NO. 204 OF 2024

Shanmugasekar

... Appellant

versus

The State of Tamil Nadu

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant, the accused no. 1, who has been convicted for the offences punishable under Section 294(b) and 302 of the Indian Penal Code (for short, 'the IPC'), has preferred this appeal. There were six accused. The appellant and PW-4 Kesavan are the sons of accused no. 2 Kaari and accused no.3 Mandiammal. Accused no.4, Dhanalakshmi, is the appellant's wife; accused no.5, Akila and accused no.6, Aparna, are the appellant's daughters. PW-4 Kesavan had married PW-5 Saravanapriya. The deceased Muthu was the father of PW-5. PW-1 Kalidoss is the other son-in-law of the deceased Muthu. He was married to Maheswari, Muthu's daughter.

2. PW-4 Kesavan had built a tiled house and was living in the house along with his wife PW-5 and children. Adjacent to

the house of PW-4, accused nos. 2 and 3 (parents of PW-4) had built a house. They were residing on the ground floor of the house, and the appellant was living on the first floor of the house with his family. The houses had a common electricity meter. There was an understanding between the appellant and PW-4 that they would pay electricity charges every alternate month. The prosecution alleged that for September 2016, PW-4 did not pay the electricity charges. Therefore, at 8.40 pm on 28th September 2016, the appellant questioned PW-4 as to why he did not pay the electricity charges. That led to an altercation between them. The appellant was joined by accused nos.2 to 6. They supported the appellant in the ongoing altercation. The deceased Muthu was residing in the house, which was very close by at a distance of 100 feet. As PW-1's wife Maheswari was pregnant, he and his wife were staying in the deceased's house. On hearing the noise, the deceased, PW-1 and PW-5, came to the spot and tried to intervene. The quarrel between the two groups started. Amidst quarrel, the appellant and accused no.2 rushed back to their house and brought billhooks. The allegation is that they attacked the deceased with a billhook on his head. In the fight, PW-4 and PW-5 were injured. The deceased was taken to hospital, where he was declared dead. The prosecution relied upon the evidence of eye-witnesses PW-1 Kalidoss, PW-2 Sathyamoorthi, PW-3 Govindammal, PW-4 Kesavan, PW-5 Saravanapriya, and PW-6 Chandrashekar. PW-2, PW-3 and PW-6 are the sons of Muthu's elder brother. It is alleged that the appellant and co-accused made an extra-judicial confession before the Village

Administrative Officer (PW-8). We must note here that the Trial Court, for the reasons recorded, did not believe the theory of extra-judicial confession and discarded the prosecution's evidence to that extent. However, eyewitnesses supported the prosecution, and their testimony was the basis of the appellant's conviction.

3. The Trial Court acquitted the accused nos. 3 to 6. As stated earlier, the Trial Court convicted the appellant for offences punishable under Sections 294(b) and 302 of the IPC. Accused no.2, Kaari was convicted only for the offences punishable under Section 294(b) and 324 of the IPC. The appellant preferred an appeal against the conviction. PW-1 Kalidoss preferred an appeal for challenging the acquittal of accused no.2 for the offence punishable under Section 302 of the IPC and the acquittal of the other accused. By the impugned judgment, the High Court dismissed all the appeals. As can be seen from the order dated 3rd February 2023, notice was issued by this Court on the basis of one of the contentions that, at the highest, the offence committed by the appellant would be punishable under part II of Section 304 of the IPC.

SUBMISSIONS

4. The learned senior counsel appearing for the appellant has taken us through the notes of evidence. He submitted that all the factual aspects have not been brought on record by the prosecution. He submitted that there is a serious controversy regarding the time of the incident, which creates a serious

doubt. The prosecution has not proved the guilt of the appellant beyond reasonable doubt.

5. Without prejudice to the contentions mentioned above, the learned senior counsel submitted that the appellant had no intention to kill the deceased Muthu. His dispute was with PW-4 Kesavan and it was the deceased and PW-1 who came to the site to intervene. He submitted that by no stretch of imagination, the appellant had any motive to kill the deceased Muthu. The motive has not been established. The intention of the appellant to kill Muthu has not been established. The learned senior counsel submitted that the appellant is covered by the exceptions under Section 300 of the IPC. Learned counsel further submitted that the injuries were not sufficient by themselves to cause death in the ordinary course. He relied upon the decisions of this Court in the case of **Chilamakur Nagireddy and Ors. v. State of Andhra Pradesh**¹ and **Virsa Singh v. State of Punjab**². He submitted that this was a case where there was no pre-meditation, and the offence occurred due to a sudden fight in the heat of passion. He would, therefore, submit that at the highest, the offence proved against the appellant will be punishable under Part II of Section 304 of the IPC. The learned counsel for the respondent supported the appellant's conviction.

¹ (1977) 3 SCC 560

² AIR 1958 SC 465

CONSIDERATION OF SUBMISSIONS

6. We have carefully perused the evidence of the prosecution witnesses. PW-4 Kesavan is the real brother of the appellant and Muthu was the father-in-law of PW-4. From the evidence of the material prosecution witnesses, it appears that there was a quarrel between the appellant and PW-4 due to non-payment of the electricity bill of the house by PW-4, and the altercation was on the night of 28th September 2016. The whole thing started as the appellant started questioning PW-4 as to why he had not paid the electricity bill. There does not appear to be any dispute on this. A perusal of the evidence of PW-5 and other eye-witnesses shows that after hearing the noise of the quarrel, the deceased, along with PW-1 Kalidoss, came there and tried to intervene in the ongoing quarrel. The fight was amongst the family members of the accused no.2. However, the evidence of the eye-witnesses shows that the appellant and accused no.2, while the quarrel was going on, rushed back to their house and brought one Aruval (billhook) each in their hands. The witnesses are consistent on the fact that the appellant assaulted the deceased on his head by using Aruval. As the eyewitnesses are related to the deceased, we have closely scrutinised their evidence. We find no material contradictions and omissions brought on record in their cross-examination. As the ocular evidence of the eyewitnesses inspires confidence, minor discrepancies in their evidence regarding the exact time of the incident are not sufficient to discard their testimony.

7. If there was no intention on the part of the appellant to cause bodily injury to the deceased and other injured witnesses, there was no reason for him to go back to his house and bring the weapon. He brought the billhook from his home, obviously to make an assault. It is not the defence of the appellant that the deceased was the aggressor. The deceased had come to the spot only to resolve the fight among the family members of the appellant. Hence, it cannot be said that there was a sudden and grave provocation due to any act on the part of the deceased. The appellant himself started the dispute by questioning the PW-4 on non-payment of the electricity bill. Therefore, the appellant's case will not fall under Exception 1 or Exception 4 of Section 300 of the IPC. We may also note here that the post-mortem notes show that there was a brain injury inflicted on the deceased. The medical opinion is that the deceased died due to shock and bleeding on account of the chest injury and head injury.

8. Therefore, there is no reason to interfere with the view taken by the courts that the offence punishable under Section 302 of IPC was proved beyond reasonable doubt. Hence, the appeal is dismissed.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
July 10, 2024.**