

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1002/2013

SURESH

APPELLANT(S)

VERSUS

THE STATE OF KERALA

RESPONDENT(S)

J U D G M E N T

Being aggrieved by the judgment dated 26.06.2012 passed in Criminal Appeal No.513 of 2009 by which the judgment of the Sessions Court in S.C.No.1 of 2007 passed by the I Additional Sessions Court, Palakad dated 23.10.2008 by which the appellant was imposed life imprisonment and convicted to pay a fine of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for six months under Section 302 of the Indian Penal Code, 1860 (for short, "IPC"); further the appellant/accused was directed to undergo rigorous imprisonment for seven years for the offence under Section 397 IPC with set off under Section 428 of the Code of Criminal Procedure, 1973 (for short, "CRPC") subject provisions of Section 433A CRPC and other connected provisions of the CRPC by directing that the said sentences to run concurrently has been affirmed by the impugned judgment, the appellant is before this Court.

We have learned counsel for the appellant and learned counsel for the respondent No.1-State.

We have perused the material on record.

Learned counsel for the appellant made a two fold submissions:

Firstly, learned counsel contended that both the Sessions Court as well as the High Court were not right in convicting the appellant under Sections 397 read with 302 of IPC; that this is a case of circumstantial evidence; that there is no direct eye witness to the incident; the very charge framed under Section 302 IPC was erroneous. It was further submitted that the evidence on record do not support the charge being proved under Section 302 IPC. In the circumstances, the Sessions Court as well as the High Court were not right in imposing the punishment of life imprisonment on the appellant under Section 300 read with Section 302 of the IPC. He contended that the appellant is entitled to be acquitted inasmuch as the evidence with regard to the charge under Section 397 IPC is also not proved in the instant case.

Alternatively, learned counsel for the appellant made a second submission to contend that even if the charge under Section 397 of the IPC is said to have

been proved, the prosecution has failed to prove the case under Section 302 of the IPC. It was submitted that even if there was an intention on the part of the appellant to rob the deceased as per the ingredients of Section 397 of the IPC, no case under Section 302 of the IPC was made out and as already contended the charge under the said Section was not correct at all. In other words, the submission was at best, the charge could have been under Section 304 Part II of the IPC as there was an absence of intention on the part of the appellant to commit the murder of the deceased. He therefore submitted that in the event this Court is not inclined to set aside the conviction then alternatively, the punishment may be reduced having regard to the nature of the offence coming under part II of Section 304 of the IPC.

Learned counsel for the appellant submitted that the appellant has been in jail for seven years' and eight months and he has been on bail since 22.07.2013 passed by this Court. Therefore, this Court may also consider reducing the sentence under Section 304 Part II of the IPC to the period already undergone as the maximum punishment under that provision is ten years or with fine or with both. Learned counsel for the

appellant submitted that the appeal may be allowed and relief may be granted to the appellant herein.

Per contra, learned counsel for the respondents submitted, at the outset, that there is no merit in this appeal. Both the Sessions Court as well as the High Court were right in convicting the appellant under Section 397 read with Section 302 of the IPC. Although this case may be a case of circumstantial evidence under the effect that during the course of committing the offence under Section 397 of the IPC, the death occurred would clearly indicate that there was an intention on the part of the appellant to cause death while committing robbery. Therefore, there is no merit in this appeal and hence, the same may be dismissed.

In response to the alliterative submission made by the appellant herein, learned counsel for the respondent without prejudice to his main contention submitted that in the event this Court is inclined to accept the alternative submission of learned counsel for the appellant, then, the punishment may be extended to ten years under Part II of Section 304 of the IPC and hence, no leniency may be shown to the appellant as it is a case owing to the robbery

committed by the appellant on the deceased which has been proved under Section 397 IPC and in the course of the said robbery, there was a death caused to the deceased. He therefore contended that an appropriate order may be made in this appeal.

We have considered the arguments advanced at the bar.

We have perused not only the impugned judgment of the High Court but also the judgment of the Sessions Court.

We are not inclined to accept the arguments of learned counsel for the appellant who strenuously contended that this is a case where the appellant ought to be acquitted completely.

In the circumstances, we have considered the alternative submission of learned counsel for the appellant made by virtue of part II of Section 304 of the IPC.

We have considered the circumstances under which the victim Suneeta died. We find that the appellant accused attempted robbery on her and the case of the prosecution under Section 397 of the IPC has been proved. This is also supported by the recoveries made from the person of the appellant inasmuch as the gold

ornaments which belong to the deceased Suneeta were recovered from him. However, we find that the attempt of the accused/appellant was to rob the victim Suneeta. We do not find from the evidence on record that any weapon as such was used by the appellant. The cause of death was due to asphexia owing to the deceased being pushed into the slush of mud in to the paddy field in the attempt to rob her gold ornaments as a result of which she swallowed possibly water as well as the mud and the slush which resulted in asphexia, we find the case is one of circumstantial evidence inasmuch as there is no eye witness to the actual incident as such. We find that in the facts and circumstances of the case, there is no intention on the part of the appellant/accused to cause death of the victim. The intention was to rob her gold ornaments. However, having regard to the fact that in the process the victim fell and she died owing to the forceful act of the appellant in trying to rob, we find that the case would fall under part II of Section 304 of the IPC. On a reading of the said provision it is punishment for culpable homicide not amounting to murder when there is knowledge on the part of the accused that his acts are likely to cause death; but

without any intention to cause death or cause any bodily which is likely to cause death. Consequently, having regard to the nature of the offence, we invoke Section 304 Part II IPC and we modify the sentence from one of life imprisonment to imprisonment for two years. We note that the appellant has been in jail for a period of seven years eight months. Consequently, the bail bonds shall stand canceled. The appellant shall surrender to undergo the rest of the sentence on or before 10.10.2025.

The appeal is allowed in part in the aforesaid terms.

....., J
[B. V. NAGARATHNA]

....., J
[R. MAHADEVAN]

NEW DELHI
SEPTEMBER 10, 2025.

ITEM NO.101

COURT NO.3

SECTION II-D

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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SURESH

APPELLANT(S)

VERSUS

THE STATE OF KERALA

RESPONDENT(S)

Date : 10-09-2025 This appeal was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) : Mr. Renjith B. Marar, Adv.
Mr. Renjith. B, AOR
Mrs. Lakshmi N. Kaimal, Adv.
Mr. Arun Poomulli, Adv.

For Respondent(s) :Mr. Nishe Rajen Shonker, AOR
Mrs. Anu K Joy, Adv.
Mr. Alim Anvar, Adv.
Mr. Santhosh K, Adv.
Mrs. Devika A.l., Adv.

UPON hearing the counsel the Court made the following
O R D E R

Appeal is allowed in part in terms of the signed
non-reportable judgment, which is placed on file.

Pending application(s), if any, shall stand
disposed of.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(DIVYA BABBAR)
COURT MASTER (NSH)