



2022 INSC 897



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

CRIMINAL APPEAL NO.63 OF 2011

KRISHNAMURTHY

.... APPELLANT(S)

VERSUS

**STATE REP. BY THE INSPECTOR
OF POLICE**

.... RESPONDENT(S)

JUDGMENT

1. The instant appeal filed by the appellant- Krishnamurthy (Original Accused no. 2) under Article 136 of the Constitution of India is directed against the judgment and order dated 27.10.2009 passed by the High Court of Judicature at Madras in Criminal Appeal No. 734 of 2008, whereby the High Court had dismissed the appeal of the present appellant and confirmed the judgment of conviction and sentence passed against him by the Sessions Court, Cuddalore (hereinafter referred to as the “Sessions Court”) in Sessions Case No. 101 of 2007.

2. Initially, three accused named – Govindaraj, Krishnamurthy and Selvaraj were charged and tried before the Sessions Court, which after appreciating the evidence on record convicted and sentenced the accused no. 1 – Govindaraj for the offences under Sections 294(b), 324 and 302 r/w Section 34 of IPC; convicted and sentenced the accused no. 2- Krishnamurthy for the offence under Section 302 of IPC and convicted and sentenced the accused no. 3- Selvaraj for the offence under Section 302 r/w Section 34 of IPC. The High Court in the appeal preferred by all the three accused, vide the impugned judgment and order dismissed the appeal of accused no. 2 i.e., the present appellant and modified the judgment and order of conviction and sentence of accused no. 1 by convicting him for the offence under Sections 324 and 294(b) of IPC and sentenced him to undergo two years of rigorous imprisonment for the offence under Section 324 of IPC, and to pay a fine of Rs. 500/- for the offence under Section 294(b) of IPC. The High Court also modified the judgement and order of conviction and sentence of accused no. 3, by convicting him for the offence under Section 323 of IPC alone and directing him to undergo simple imprisonment for a period of one year for the said offence.
3. The judgment and order passed by the High Court qua the accused nos. 1

and 3 have neither been challenged by them, nor the State has preferred any appeal against the impugned judgment acquitting the accused nos. 1 and 3 for the offence under Section 302 r/w Section 34 of IPC. The present appeal has been filed only by the accused no. 2 challenging the impugned judgment convicting him for the offence under Section 302 and sentencing him to the life imprisonment.

4. The case of the prosecution in nutshell before the trial was that the deceased – Samidurai and the accused were the neighbours in the village – Elavathadi. Some quarrel had taken place between accused no. 1 and the wife and the son of the deceased in respect of a missing goat belonging to the deceased Samidurai. In the said quarrel on 13.03.2006, accused no. 1 – Govindaraj assaulted the son of the deceased Shanmugaperumal using an iron rod on his hands and biting him on his cheek. On 14.03.2006 at about 2.00 a.m, all the three accused, with the intent to assault the deceased and his family members, armed with an iron pipe and wooden log, came to the house of the deceased by hurling abusive filths against the family members of the deceased. The deceased came out of his house and asked the accused as to why they were shouting at such an odd hour. By that time, the accused no. 2 - Krishnamurthy assaulted Samidurai on his head with a wooden log and pushed him down, while the first accused- Govindaraj assaulted

Samidurai who was lying on the ground using an iron pipe on his chest and the third accused-Selvaraj also assaulted Samidurai by a wooden log on the right side of his chest. When the family members of Samidurai came to rescue him, all the accused threatened them with dire consequences and ran away from the place. The said Samidurai succumbed to injuries and died at about 04.15 p.m. on 14.03.2006. On the complaint having been lodged by PW-1, son of the deceased, the investigation was carried out and the chargesheet was filed against all the three accused.

5. The learned Advocate Mr. Senthil Jagadeesan appearing for the appellant-accused no. 2 drawing the attention of the Court to the observations made by the High Court submitted that the High Court while confirming the conviction of the appellant for the offence under Section 302 has observed that the act of the appellant was not done intentionally to cause the death of the deceased. He also drew the attention of the Court to the injuries suffered by the deceased, and submitted that by no stretch of imagination could it be said that the appellant, who was armed with a wooden log, had any intention to cause murder of deceased-Samidurai. According to him, at the most it could be said that the appellant had knowledge that such injuries was likely to cause death and, therefore, his case should fall under Part II of Section 304 and not under Section 302 of

IPC, more particularly, when the other two accused have not been convicted by the High Court for the offence under Section 302 r/w Section 34 of IPC. Learned Advocate Dr. Joseph Aristotle S. appearing for the respondent-State, however, supporting the impugned judgment passed by the High Court submitted that the findings recorded by the two courts below convicting the appellant under Section 302 being just and proper, this Court may not interfere with the same.

6. Having regard to the submissions made by the learned counsel for the parties and to the evidence on record as also the findings recorded by the Sessions Court and the High Court, it appears that appellant no. 2 though has not specifically admitted, has not disputed the occurrence of the incident in question. The only contention raised by the learned counsel for the appellant is that considering the nature of injuries suffered by the deceased and the alleged role of the appellant, he should have been convicted and sentenced for the offence under Section 304 (II) and not under Section 302 of IPC. Now, so far as the injuries suffered by the deceased are concerned, PWs 2, 3, 5 and 6 had deposed in their respective evidence that the appellant -accused no. 2 had attacked the deceased with wooden log on his head, while accused no. 1 had attacked him with an iron pipe and accused no. 3 had attacked the deceased with a wooden log and by giving fist on his chest. PW-10 Dr. Ezhil, who had initially

examined the deceased at the Government Hospital, had recorded the history that there was an assault on him at about 2.00 a.m. with pipes and sticks by three known persons, in front of his house. He had further stated before the Court that the deceased was unconscious when he was brought to the hospital. He had suspected head injuries. PW-11 who had conducted the post-mortem of the deceased on 15.03.2006 had recorded the injuries in the postmortem report at Exhibit P-8. In Exhibit P-8 amongst other injuries, following injuries were recorded:

- i) Fracture of 3rd and 4th ribs on the right side
- ii) Subdural hematoma present on the left frontal parietal region with left frontal intra cerebral hemorrhage.

He had opined that the death of the deceased Samidurai was due to shock and hemorrhage on account of head injuries and due to subdural haematoma on the left frontal intra cerebral hemorrhage. He had stated before the court that such injuries were possible with the use of weapons like wooden log.

7. As stated earlier, the accused nos. 1 & 3 have not challenged their conviction, nor the State has preferred any appeal against the findings recorded by the High Court qua the said accused nos. 1 & 3. Hence, the occurrence of the incident having not been challenged, the Court does not deem it necessary to discuss the entire evidence. Suffice is to say that the

involvement and alleged role played by each of the three accused by attacking the deceased at the midnight hour on 13.03.2006 was duly proved by the prosecution. At this juncture, it is pertinent to note that the High Court in the impugned judgment has thought it fit not to convict the accused nos. 1 and 3 for the offence under Section 302 r/w Section 34 of IPC, while convicting the present appellant for the offence under section 302 IPC. We have our own reservations with regard to the said findings, however, the State having not preferred any appeal against the said findings, we do not think it proper to dwell much into the same, and that too after about more than 12 years of the impugned judgment. Interestingly, the High Court though had recorded that the act of accused no. 2 was not done intentionally to cause the death of the deceased, yet has convicted him for the offence under Section 302 of IPC sentencing him to the life imprisonment.

8. In view of the above, and having regard to the role played by the appellant, to the use of the weapons and to the injuries suffered by the deceased, we are of the considered opinion that it could not be said by any stretch of imagination that the appellant had an intention to cause such injuries to the deceased-Samidurai so as to cause his death. In our opinion, at the most it could be said that he had committed the alleged act with the knowledge that such act was likely to cause death. Therefore, his case would fall under

Section 304(II) of IPC and not under Section 302 IPC.

9. Accordingly, this appeal is allowed to the extent and in the manner that the conviction of the appellant is altered to that of the offence punishable under Section 304 Part II IPC. The appellant is accordingly sentenced to the imprisonment for a term of 10 years and to pay a fine in the sum of Rs. 10,000/-. The appellant has already undergone imprisonment for a longer term. Thus, the appellant may be released immediately.
10. The appeal stands disposed of accordingly.

.....J
[DINESH MAHESHWARI]

.....J.
[BELA M. TRIVEDI]

**NEW DELHI;
SEPTEMBER 01, 2022.**

ITEM NO.103

COURT NO.11

SECTION II-C

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

Criminal Appeal No. 63/2011

KRISHNAMURTHY

Appellant(s)

VERSUS

STATE REP. BY INSPECTOR OF POLICE

Respondent(s)

Date : 01-09-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Mr. Senthil Jagadeesan, AOR
Mr. B. Karunakaran, Adv.
Ms. Sonakshi Malhan, Adv.
Mr. Sajal Jain, Adv.
Ms. Remya Raj, Adv.
Mr. Mrinal Kanwar, Adv.

For Respondent(s) Dr. Joseph Aristotle S., AOR
Ms. Nupur Sharma, Adv.
Mr. Shobhit Dwivedi, Adv.
Mr. Sanjeev Kumar Mahara, Adv.

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

Heard learned counsel for the parties and perused the material placed on record.

For reasons to follow, this appeal is allowed to the extent and in the manner that the conviction of the appellant is altered to that of the offence punishable under Section 304 Part II IPC. The appellant is accordingly sentenced to the imprisonment for a term of 10 years and to pay a fine in the sum of Rs.10,000/-. The appellant has already undergone imprisonment for a longer term. Thus, the appellant may be released immediately.

The appeal stands disposed of accordingly.

(NEETA SAPRA)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)