

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2370 OF 2009

MADAPPAN MUHASSIN

.. APPELLANT(S)

VERSUS

STATE OF KERALA

.. RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order of the High Court of Kerala at Ernakulam in Criminal Appeal No.838 of 2002, dated 25.05.2009 whereby and whereunder the High Court has confirmed the order of conviction and modified the order of sentence passed by the Trial Court in Sessions Case No.17 of 2001 dated 26.09.2002.

2. The prosecution's case is as follows:

On 05.05.1997, at about 12:45 am, in front of Royal Hotel, Guruvayur (run by CW-12), a physical altercation broke out between the appellant and the

deceased. During this altercation, the appellant kicked the deceased on his chest causing him to fall and hit his head on the concrete floor. The deceased was gravely injured and was taken to the hospital by the appellant and others where he succumbed to his injuries. An FIR was registered as Crime No.99/97 regarding this incident. Subsequently, the investigation was completed and a charge sheet was filed before the Trial Court.

3. Thereafter, on the appellant appearing before the Trial Court, a charge was framed against the appellant for the offence under Section 302 of the Indian Penal Code (for short, "the IPC"). The appellant pleaded not guilty to the charge and, consequently, the case was committed to trial.

4. The prosecution examined 14 witnesses and produced 12 documents and two material objects. While no evidence was adduced by the defense, the appellant's statement was recorded under Section

313(1) (b) of the Code of Criminal Procedure (for short "the Code") wherein he denied the prosecution's case.

5. The Trial Court considered the evidence on record as also the arguments of the parties and noticed that the testimony of the eye-witness (PW-1) was reliable and had been corroborated by medical evidence and that the prosecution had been able to prove that the deceased had been kicked on the chest by the appellant and had fallen and hit his head on the concrete floor as a result of which he had died. The Court further rejected the appellant's contention that the deceased's death had been caused by poison and not the said injuries. However, on the facts and circumstances of the case, the Court concluded that the appellant had no intention of causing the deceased's death and, in light of this fact, the appellant could not be held guilty of the offences under Sections 302 of the IPC.

6. The Trial Court further observed that the injuries inflicted on the deceased by the appellant constituted "grievous hurt" as defined in Section 320 of the Act and the same could be brought within the purview of Section 325 of the IPC. The Court rejected the appellant's plea of self-defence and, *vide* judgment and order dated 26.09.2002, convicted the appellant for the offence under Section 325 of the IPC and sentenced him to rigorous imprisonment for a period of four years, with permission to set-off the period undergone.

7. Aggrieved by the order of said conviction and sentence, the accused approached the High Court on the grounds, *inter alia*, that the testimony of PW-1 was unreliable, that the evidence on record was not sufficient to prove the appellant guilty of the offence under Section 325 of the IPC and that the appellant had been acting in self-defense in the said incident.

8. By the impugned judgment and order, the High Court re-appreciated the entire evidence on record and noticed that the evidence on record was sufficient to prove that the deceased had died due to the head injury caused by the appellant kicking him. The Court, while concurring with the Trial Court that the appellant had no intention of causing the deceased's death, rejected the appellant's plea of self-defense. Therefore, vide the impugned judgment and order the High Court confirmed the order of conviction passed by the Trial Court. However, in light of the fact that the appellant was a coolie by profession and had several dependants, the High Court modified the sentence imposed on the appellant to rigorous imprisonment for a period of one year and a fine of Rs.25,000/-.

9. Aggrieved by the judgment and order passed by the High Court, the appellant is before us in this appeal.

10. We have heard learned counsel for parties to the *lis*.

11. Learned counsel for the appellant would submit that, in light of the fact the appellant had no intention of causing the deceased's death as well as other mitigating circumstances, the appellant's conviction cannot be sustained. *Per contra*, learned counsel for the respondent-State would support the judgment and order passed by the High Court.

12. After carefully perusing the material on record, including the judgments and orders passed by the Courts below, the appellant's case fails to convince us. The Courts below have recorded concurrent findings that the deceased's death was caused by the head injury received by him as a result of the appellant kicking him in the chest. We find no infirmity in the High Court's reasoning in this regard and we concur with the same.

13. On the question of sentence, learned counsel for the appellant would submit that in light of the fact that the appellant is a daily-wage worker and has three dependants, that the appellant was only 27 years old at the time of the said incident and that the appellant's conduct subsequent to the incident in taking the deceased to the hospital, the sentence imposed on the appellant ought to be reduced. However, given the seriousness of the offence committed by the appellant and the fact that the said incident resulted in the death of individual, we find that the sentence imposed on the appellant cannot be reduced.

14. In light of the aforesaid, we are of the considered opinion that the judgment and order passed by the High Court does not suffer from any infirmity whatsoever and does not require our interference. The appeal, being devoid of any merit, is liable to be dismissed and, is dismissed

accordingly.

15. The appellant is directed to be taken into custody forthwith to serve out the remaining period of sentence.

Ordered Accordingly.

.....CJI.  
[ H.L. DATTU ]

.....J.  
[ ARUN MISHRA ]

NEW DELHI,  
SEPTEMBER 10, 2015.

ITEM NO.2

COURT NO.1

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 2370/2009

MADAPPAN MUHASSIN

Appellant(s)

VERSUS

STATE OF KERALA

Respondent(s)

Date : 10/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Amer Mushtaq Salim, Adv.  
Ms. Swati Setia, Adv.  
Mr. Ramesh Babu M. R., Adv.

For Respondent(s) Ms. Liz Mathew, Adv.  
Mr. M.F. Philip, Adv.

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

The appeal is dismissed in terms of the signed order. The appellant is directed to be taken into custody forthwith to serve out the remaining period of sentence.

[ Charanjeet Kaur ]  
A.R.-cum-P.S.

[ Vinod Kulvi ]  
Asstt. Registrar

[ Signed order is placed on the file ]