

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2023
(Arising out of SLP(Crl.) No(s). 178 of 2020)

SURESH

....APPELLANT(S)

VERSUS

STATE OF KERALA

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal is directed against the judgment dated 6th November, 2018 affirming conviction of the accused appellant under Sections 302 and 449 of the Indian Penal Code, 1860 (hereinafter being referred to as the “IPC”) and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5000/- for the offence punishable Section 449 IPC and to undergo imprisonment for life and to pay a fine of Rs.5,000/- for the offence punishable under Section 302 IPC.

3. Limited notice was issued by this Court with respect to the sentence awarded taking note of the submission of the learned counsel for the appellant that whether the case falls within the contours of Section 304 Part-I IPC and not under Section 302 IPC which reveals from the Order dated 8th January, 2020.

4. The case of the prosecution is that at the time of alleged incident, victim Devarajan, husband of PW-13, was residing in quarter no. 109 of Siruvani Estate. The incident happened within the dwelling house of both victim Devarajan and PW-13 (wife of the victim). The appellant was found guilty of murder mainly based on the oral evidence tendered by PW-13 wife of the deceased, the eye-witness of the alleged incident, the corroboration given by PW-14 who had given FIS and the oral evidence of PW-1, besides the injury sustained by the appellant in the alleged incident and the recovery of weapon used for commission of offence.

5. The learned Sessions Judge, in the first instance, found the appellant guilty and punished him for offence punishable under Sections 302 and 449 IPC and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of

Rs.5,000/- for the offence punishable under Section 449 IPC and to undergo imprisonment for life and to pay a fine of Rs. 5000/- for the offence punishable under Section 302 IPC.

6. The injuries alleged to have been sustained by the victim which are noted as ante-mortem injury nos.1 to 13 in Ext P6 post-mortem examination report, are as follows:-

"B. INJURIES ANTEMORTEM:

1. Contusion 2.5x2.5x1 cm on the outer aspect of right forehead inner lower extend at the right eyebrow and 5 cm outer to midline.
2. Contusion 7x3x2cm obliquely placed on the right side of face over the cheek region incorporating a lacerated wound 1x0.5x0.2 cm obliquely placed and parallel to the contusion on its lower portion. Its lower extend 6 cm above lower border of jawbone and 7 cm outer to midline.
3. Abrasion 0.5x0.5 cm right side of forehead 4 cm above right eyebrow and 1 cm outer to midline.
4. Abraded contusion 1.5x0.5x0.2 cm over the outer and top aspect of helix of left pinna of left ear.
5. Abraded contusion 1x1x0.3 cm over the left side of neck 1 cm below the ear.
6. Lacerated wound 2x0.2 cm bone deep obliquely placed over the left side and back of head with surrounding abrasion over an area 2x1 cm its inner lower end 2.5 cm above external occipital protuberance and 3 cm outer to midline.

On dissection and reflecting the scalp, a contusion 11x3 cm involving the full thickness of scalp, obliquely placed underneath, upper inner extend at left parietal prominence. Another contusion 13x8 cm over the left parieto temporal region involving its full thickness, lower extent at left ear, the left temporalis muscle underneath was contused. Another contusion 4x3 cm right parieto temporal region, lower extend 2 cm above right ear. The temporalis

muscle underneath was contused involving its full thickness. The skull was intact, on removing the top of skull, the dura was found stretched and bulging. Thin subarachnoid haemorrhage seen bilaterally over right and left parieto temporal region. Brain was congested and oedematous.

7. Abrasion 1.5x0.5 cm transversely placed on left side of root of neck, front end 11 cm outer to midline and 12 cm below mastoid bone tip.
8. Contusion 22x12-30 cm bone deep on the back of chest across midline upper extent 13 cm below root of neck. Contusions seen more over the right side. Underneath the right ribs 9, 10, 11 were fractured on the back aspect and 7 cm outer to midline with surrounding blood infiltration over an area 12x12 cm involving the intercostal muscles. Fracture dislocation noted at left 10th rib on the back aspect with surrounding infiltration of blood. Right lung showed a contusion 8x4x0.5 cm on the back aspect of right lower lobe.
9. Abrasion 0.5x0.5 cm right side of sacral region 3 cm outer to midline and 6 cm above gluteal cleft.
10. Abrasion 6x5 cm outer aspect of right hip upper extend 2 cm below top of hip and 12 cm outer to midline.
11. Abrasion 1x0.2 cm obliquely placed outer aspect of right upper arm lower end 7 cm above right elbow.
12. Two abrasions over an area 2.5x1 cm separated by a distance of 0.5 cm over the back aspect of right upper arm its lower extend 4 cm above right elbow.
13. Abrasion 1x1 cm back aspect of right forearm 2 cm below right elbow.”

7. The medical evidence adduced by PW-7 shows that injury nos. 6 and 8 are caused possibly by hitting with MOI stone. Injury no. 6 is on the head and injury no. 8 is on the back of chest. It also reveals from the post-mortem report that the heavy grinding stone was used for the commission of offence and the pressure was

applied while inflicting injury on the body of the victim, that too over the vital parts, head and chest.

8. A strict scrutiny of the oral evidence tendered by PW-13 would show that there is no embellishment but what is narrated by her is the true version of what she had experienced on the alleged date and time of the incident. She had given a narration of the alleged incident which is having two separate episodes. The first one is that the accused came to her house and as usual picked up quarrel with her husband and they fought with each other at the verandah of the house. It is also spoken by her that during the course of quarrel between the appellant and the victim, the victim gave a stab injury to the appellant. On receiving the stab injury, the appellant went away from her house. The second episode, according to her, started when PW-13 and her husband were sleeping in their dwelling house, the accused appellant stealthily entered into the house with a wooden stick and took a country grinding stone and hit on the victim's head. He had also attacked PW-13 by beating on her cheek and body and she fell down. The appellant again hit on

victim's head with the country grinding stone and then left the place.

9. PW-14 who had given Ext P1 (FIS) supported the version of PW-13. According to him, by morning, PW-13 approached him and had disclosed the death of her husband. PW-14 went to the place of occurrence and had seen the dead body of the victim lying on the floor of the quarters (dwelling house of the victim). Immediately, he went to the police station and had given Ext. P1 (FIS) and caused to register FIR.

10. On consideration of the prosecution evidence and of PW-13 which is supported by PW-14 in particular, we are of the view that the death of the victim was not caused in the heat of the sudden fight and it was a case of murder under Section 302 IPC and not under any exceptions of Section 300 IPC. Further, the appellant has rightly been convicted under Sections 302 and 449 IPC.

11. Consequently, the appeal fails and accordingly dismissed.

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

.....J.
(AJAY RASTOGI)

.....J.
(BELA M. TRIVEDI)

**NEW DELHI;
FEBRUARY 14, 2023**