

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

**CRIMINAL APPEAL NO.OF 2023
(@ SPECIAL LEAVE PETITION (Crl.) No. 533 OF 2021)**

PANNEER SELVAM

.....APPELLANT

VERSUS

STATE OF TAMIL NADU

.....RESPONDENT

J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave granted.
2. The present appeal is directed against the judgement and order dated 29.03.2019 passed by the High Court of Judicature at Madras in Crl. Appeal No. 85 of 2019, whereby the High Court has dismissed the said appeal and confirmed the judgement and order passed by the 3rd Additional District and Sessions Court, Fast Track Court, Coimbatore in Sessions Case No. 192 of 2016. The Sessions Court while acquitting the appellant-accused for the offence under Section 302 of IPC, had convicted him for the offences under Section 304(ii) and 506(i) of IPC and had directed him to undergo 07 years of rigorous imprisonment and pay fine of

Rs. 5,000/- in default thereof to undergo further simple imprisonment for a period of 06 months for the offence under Section 304(ii) IPC, and directed to pay fine of Rs. 1,000/- in default thereof to undergo simple imprisonment for a period of 04 weeks for the offence under Section 506(i) of IPC.

3. This Court vide order dated 13.01.2021, had issued notice to the respondent only on the quantum of sentence. Accordingly, the learned counsels for the parties were heard only on limited issue of the quantum of sentence.

4. As per the case of the prosecution, the appellant-accused and the deceased-Mahalingam were the relatives. The appellant and the deceased used to have quarrels prior to the alleged incident as the deceased used to pester the appellant to get liquor for him. Frequently, the appellant therefore had developed hatred against the deceased and had planned to eliminate him. On 14.04.2015, Mariamman Kovil festival was going on in the village Vellanaipatti, where the appellant and the deceased were staying. On the said day, at about 05:00 PM, the appellant deceitfully invited the deceased for having liquor. Along with the deceased, the appellant had also taken one Sarathkumar Samy (PW-2) and he took them to a remote place on Nilambur Road. At about 05:15 PM, a quarrel took place with the appellant and the deceased, and the appellant thrashed the deceased with

repeated blows on his face. As a result, deceased lost his balance and fell down on the ground. The appellant again thrashed him on cheeks repeatedly by pressing him on the ground with his legs. The witness Sarathkumar Samy tried to intervene but the appellant threatened him not to intervene. The panicked Sarathkumar on seeing the unconscious Mahalingam (deceased) requested a passerby named Ponnusamy (PW-3) who belonged to the same village to give him a phone, and he then called the brother of the deceased Arulkumar (PW-1). Arulkumar having come on the spot took his brother Mahalingam to the Government Hospital at Coimbatore, where his brother Mahalingam succumbed to the injuries on the next day. He therefore lodged the complaint before the Kovilpalayam Police Station against the appellant-accused.

5. The learned senior advocate Mr. S. Nagamuthu submitted that the fight had occurred between appellant and the deceased on the spot and there was no premeditation on the part of the appellant to commit murder of the deceased. He further submitted that there was nothing on record to suggest that the appellant had taken undue advantage or had acted in a cruel or unusual manner. According to him, considering the evidence on record, the Trial Court and High Court had acquitted the

appellant from the charges levelled against him under Section 302 IPC and convicted him only for the offence under Section 304(ii) of IPC. He further submitted that the appellant has already undergone more than 04 years of the sentence and this is the fit case to reduce the sentence to the extent of the sentence undergone by the appellant. However, the learned advocate Dr. Joseph Aristotle for the respondent-State submitted that the Sessions Court and High Court have already shown leniency to the appellant by treating the case as falling under Section 304(ii) of IPC instead of section 302 of IPC and sentenced him to undergo rigorous imprisonment of 07 years, which may not be further reduced.

6. Having regard to the submissions made by the learned counsels for the parties and to the observations and findings recorded by the courts below, it appears that the Sessions Court had convicted the appellant-accused for the offence under Section 304(ii) of IPC by recording the finding that there was no premeditation and that the appellant-accused had not taken any undue advantage or acted in a cruel or unusual manner. The fight had taken place as the deceased used to pester the appellant to get liquor for him frequently, which had annoyed the appellant. The Sessions Court while imposing the sentence had

also taken into consideration the fact that the appellant-accused was the only son of his aged parents. Having regard to the said findings recorded by the Sessions Court and confirmed by the High Court, this Court is of the opinion that the interest of justice would be met if the sentence imposed on the appellant-accused is reduced to the extent of 05 years in place of 07 years.

7. In that view of the matter, the appellant is directed to undergo rigorous imprisonment for a period of 05 years for the offence under Section 304(ii) of IPC. Rest of the sentence imposed by the Sessions Court and confirmed by the High Court shall remain unchanged. The appeal stands partly allowed accordingly.

..... J.
[AJAY RASTOGI]

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

**NEW DELHI;
21.03.2023**