

Madanlal

Vs

State of Maharashtra

Criminal Appeal No. 342 of 1980

(Syed M. Fazal Ali, P. S. Kailasam JJ)

28.04.1980

JUDGMENT

FAZAL ALI, J. –

1. We have heard counsel for the parties and have gone through the judgments of the High Court and the Sessions Judge.
2. Having regard to the admitted facts and circumstances of the case and particularly to the fact that according to bed-head ticket, the deceased actually died on myocardial infraction or cardiac arrest which may have been a remote result of the injury given by the appellant. The offence under Section 302, IPC cannot be made out.
3. It is established from the bed-head ticket produced by the prosecution itself and the finding of fact given by the Sessions Judge based on the evidence of the doctor namely Dr. Dagga who was the first to examine the deceased, that the death was due to cardiac arrest. In his dying declaration which is at page 162 of the Paper-book, the deceased has merely said that a blow was given to him with a sword that too when he tried to ward off the attack by his hand. The High Court also finds that the occurrence took place following a sudden quarrel.
4. Having regard to these circumstances we are satisfied that the case of the appellant squarely falls within the ambit of Section 304 Part II of the IPC and not under Section 302. For these reasons we allow this appeal to this extent that the conviction of the appellant is altered from one under section 302 to that under section 304 Part II and the sentence imposed on the appellant is reduced from imprisonment for life to five years' rigorous imprisonment.
5. The appeal is accordingly disposed of.

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