

V. Sreedharan

Vs

State of Kerala

Criminal Appeal No.729 of 1991

(Kuldip Singh, Smt. M. S. Fathima Beevi JJ)

18.11.1991

JUDGMENT

1. The appellant Sreedharan has been convicted by the Courts below under S. 302, I.P.C. for the murder of one Peethambaran and has been sentenced to life imprisonment.
2. The prosecution case was that deceased Peethambaran went to the house of appellant on the day of Onam celebration. The appellant and his mother were taking food in the kitchen. Peethambaran asked the appellant to give food to him but the appellant's wife objected and asked Peethambaran to go out. Peethambaran became furious and while daring the appellant for not giving food he kicked the plate containing food served to the appellant and went out of the house on the road. He challenged the appellant to come out. The appellant with a dagger followed him and caught him at about 81 feet away from the house and gave dagger blow.
3. On the above facts it was argued before the High Court that the culpable homicide was not murder because it was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. The High Court rejected the contention and convicted and sentenced the appellant under Section 302, I.P.C. This Court issued notice restricted to the nature of offence and punishment.
4. We have heard learned counsel for the parties and we are of the view that in the facts and circumstances of this case the offence committed by the appellant falls under Section 304, Part I. Although the High Court accepted the contention that sheer impudence on the part of the deceased in kicking food on an auspicious day could have provoked the appellant but the High Court went further and held that since the appellant ran after Peethambaran for about 81 feet and gave him fatal injury by stopping him on the road, the provocation which the appellant got as a result of the kitchen incident could not have continued due to time lapse. We are of the view that the High Court has not appreciated the sequence in the proper perspective. The whole incident beginning from the kitchen and ending on the road was one continuous sequence. We are of the view that the single dagger blow given by the appellant to Peethambaran was as a result of provocation which he got in the heat of passion upon a sudden quarrel and he is guilty of culpable homicide not amounting to murder. We, therefore, acquit the appellant of the offence under S.302, I.P.C. and instead convict him under S.304, Part I, I.P.C. We sentence the appellant to undergo rigorous imprisonment for 7 years. He shall also pay a fine of Rs. 2,000/-. In default of the payment of fine he shall undergo further rigorous imprisonment for one year. The appeal is thus disposed of in the above terms.

Order accordingly.

</html