

**SUPREME COURT OF INDIA**

Valson

Vs.

State of Kerala

Crl.A.No.400 of 2001

(K.T.Thomas and R.P.Sethi JJ.)

30.03.2001

**ORDER**

1. Leave granted.

2. Appellant has been convicted under Section 302 of the Indian Penal Code for murdering his brother. He is sentenced to undergo imprisonment for life. The Division Bench of the High Court confirmed the conviction and sentence and dismissed the appeal.

3. As we granted leave by limiting the scope of the appeal to the nature of offence, we do not propose to go into the evidence of the case in detail. For that limited purpose it is suffice to point out the prosecution case as narrated by the Division Bench of the High Court in the impugned judgment. It is thus:

" . . .The accused who from the family house overheard the conversation between the deceased and D.W. 1 came out of the house in an aggressive mood and by this time the deceased stepped out of the room and within minutes there was an altercation between the accused and the deceased. During the course of the quarrel the accused took out M.O. 1 knife kept with him and stabbed the deceased. The deceased tried to ward off the same. But unfortunately one of the blows fell below the armpit from backside which became fatal."

4. The above facts are sufficient to show that the injury sustained by the deceased, though in the ordinary course is sufficient to cause death, would not have been intended to be inflicted by the brother assailant. The situs at which the fatal blow fell was not chosen or intended by the assailant according to the High Court and even as per facts narrated. It happened on account of fortuitous circumstances.

5. We, therefore, alter the conviction to Section 304, Part I of the Indian Penal Code. We think that, a sentence of imprisonment for a period of seven years would be sufficient to meet the ends of justice on the facts of the case. Accordingly, we order the appellant to undergo rigorous imprisonment for seven years for the offence he is convicted now.

6. The appeal is disposed of in the above terms.  
Order accordingly.