

SUPREME COURT OF INDIA

Kumaravel

Vs.

State of Inspector of Police

CrI.A.No.1191 of 2007

(Harjit Singh Bedi and Dr.B.S.Chauhan JJ.)

23.07.2009

ORDER

1. This appeal has been filed at the instance of the accused against the concurrent orders of conviction under Section 302 of the *IPC* and a sentence of imprisonment for life and a fine of Rs.5000/- and in default R.I. for two years. The facts leading to this appeal are as under:- The deceased, Mani, was the brother-in-law of PW.1-Raman and PW.2-Elumalai. The appellant, Kumaravel, owned a piece of land situated adjacent to the land belonging to PWs.1 and 2 and as they shared a common boundary, there was a dispute between them pertaining thereto. Mani who was married to the sister of PWs. 1 and 2 stayed in the village of his in laws and helped the PWs in their agricultural operations.

2. On 22/09/2001 water had collected in the fields on account of heavy rain and the appellant drained out the water from his field which flooded the land of the PWs and destroyed their ground-nut crop. On coming to know as to what had happened, PW-2 and his father, remonstrated with the appellant who in turn assaulted them. The animosity between the PWs and their father on the one side, and the appellant on the other was thereby exacerbated. On 30-09-2001 Mani went to Siruvathur to work as a daily wager and after returning therefrom he found PWs1 and 2 and their father harvesting their crop. At about 3.00 p.m. as Mani was proceeding towards his house, he was waylaid by the appellant who questioned him as to why he was supporting his father-in- law. He thereafter caught hold of him by his neck, pressed it hard and pushed it into the muddy water lying stagnant in the field. One PW.3-Maarku Knonar saw this incident and informed PWs. 1 and 2 who rushed to the place of occurrence and found the appellant pressing the neck of the deceased into the water. The appellant then ran away from the spot. The witnesses, however, found that Mani was dead. A report was duly lodged at the police station and after completion of the investigation the appellant was charged under Section 302 of the *IPC* by the Sessions Court and brought to trial.

3. The prosecution in support of its case relied primarily on the evidence of PWs1 and 2 whereas PW.3 turned hostile. The prosecution also produced in evidence PW.7 Dr. Selvaraj who had conducted the post mortem and who had opined that death was due to asphyxia. The

prosecution case was put to the accused and he denied all the allegations levelled against him and pleaded false implication.

4. The trial court convicted and sentenced the appellant as aforesaid. This conviction and sentence was confirmed by the High Court. The matter is before us by way of special leave.

5. Mr. K.K. Mani, the learned counsel for the appellant has sought to contend that the eye witnesses could not be believed on account of animosity between the parties. He also submitted that in any case there was no intention on the part of the appellant to have killed the deceased as had he intended to do so he would have armed himself with some lethal weapons but had on the contrary used his bare hands to commit the crime. He has submitted that in case the first submission was not accepted the matter would, nevertheless, fall within the ambit of Section 304 Part-I or Part-II of the IPC. The learned counsel for the State Ms. Promila has, however, argued that from the perusal of the ocular evidence it was clear that the relations between the parties were strained and the murder was pre-meditated as the appellant had waylaid the deceased and drowned him, on account of strained relations.

6. We have heard the learned counsel for the parties and perused the record. We find absolutely no reason to disbelieve PWs 1 and 2. It is the admitted position that the relations between the parties were strained but in the light of the fact that there is only one accused the question of any false implication would not arise. We, however, find merit in the second argument of the learned counsel for the appellant and observe that in the light of the fact that the incident was not pre-meditated and the meeting between the appellant was co-incidental and only bare hands had been used in suffocating the deceased who was as per the medical evidence was a healthy and young individual, the matter would fall within Section 304 Part-I and not Section 304 Part-II of the IPC. We, therefore, allow this appeal to the extent that the conviction is converted from one under Section 302 to 304 Part-I, of the IPC, and the sentenced is reduced to 10 years R.I.; the fine and the default clause remaining as it is.