

CHINNAPONNU

v.

STATE OF TAMIL NADU  
(Criminal Appeal No. 271 of 2009)

FEBRUARY 11, 2009

**[ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]**

*Penal Code, 1860 – s. 304 (Part II) – Sudden quarrel between parties – Accused attacked deceased resulting in her death – Conviction u/s. 304 (Part II) – Appeal by accused against conviction admitted by High Court – However, disposal of appeal on account of non-appearance of counsel of accused when matter taken up before the Bench of High Court – On appeal held: Counsel for the accused could not appear on account of various difficulties – Hence, matter remitted to High Court for afresh hearing.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 271 of 2009.

From the Judgment and Order dated 16.10.2006 of the Madurai Bench of Madras High Court at Madurai, in Criminal Appeal No. 856 of 1997.

G. Sivabalamurgan, Y. Arunaigiri and L.K. Pandey for the Appellant.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court, Madurai Bench, dismissing the appeal filed by the appellant. Appellant was held

A guilty of offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo rigorous imprisonment for seven years by learned Principal Judge, Dindigul.

B 3. The factual position need not be gone into in detail in view of order proposed to be passed.

C 4. The accused faced trial for alleged commission of offence punishable under Section 302 IPC. It was the prosecution version that in the course of sudden quarrel, the accused attacked Lakshmi (hereinafter referred to as the 'deceased') who was stated to be the second wife of one Samuvel. On 10.12.1994 the occurrence occurred. The accused faced trial and as noted above was convicted by the trial court. The appeal before the High Court was admitted considering the various grounds of challenge raised by the appellant. It appears from the impugned order of the High Court that the appellant's counsel did not appear when the matter was taken up and after hearing learned Additional Prosecutor, the appeal was disposed of.

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F 5. It was pointed out learned counsel for the appellant that because of various difficulties the appellant's counsel could not appear and more particularly neither the appellant nor his counsel had any knowledge that the matter was to be taken up before the Madurai Bench of the High Court.

G 6. Learned counsel for the respondent-State on the other hand submitted that the appellant and her counsel ought to have been more vigilant.

H 7. While issuing notice on 23.7.2007, it was indicated that the matter may be remitted for fresh hearing because the appellant was not represented when the matter was taken up by the Madurai Bench of the Madras High Court.

8. Considering the difficulties highlighted by the appellant to explain non-appearance of the counsel we are satisfied that this is a fit case where the High Court should re-hear the matter.

9. We have not expressed any opinion on the merits of the case. We set aside the impugned judgment and remit the matter to the High Court for fresh hearing.

10. The appeal is allowed to the aforesaid extent

N.J.

Appeal partly allowed.