

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 259 OF 2015

KANDASWAMY RAMARAJ

...APPELLANT

VERSUS

THE STATE BY INSPECTOR OF POLICE, CBCID

...RESPONDENT

O R D E R

Against the judgment dated 12.12.2013 passed by the High Court of Judicature at Madras in Criminal Appeal No. 301 of 2012 confirming the judgment dated 20.04.2012 passed in Sessions Case No. 339 of 2011 by the Additional Sessions Judge, Fast Track Court No. V, Chennai, this appeal has been filed by the convicted accused/appellant. The Trial Court as well as the High Court convicted the appellant for the offences punishable under Sections 302, 201 r/w 302 of the Indian Penal Code (for short 'the IPC') and Sections 3 r/w 25(1B)(a), 27, and 25(1B)(h) of the Arms Act, and sentenced him to imprisonment for life and a fine of Rs. 50,000/-.

The case of the prosecution in brief is that the appellant herein was a retired Lieutenant Colonel in the Indian Army. After his retirement in April 2011, he was permitted to live in the staff quarters in the defence compound for a period of three months. The army men's enclave abounds with fruit-bearing trees, which attracts urchins who live in hutments across the road, particularly boys aged about 10-15 years, who cross the compound wall to pick almonds

and mangoes.

At about 1.30 p.m on 03.07.2011, the deceased, Dilshan, and three of his friends, Sanjay (PW-2), Praveen (PW-3) and Vignesh (PW-7), ventured into the army men's enclave to pluck almonds and mangoes. While they were flinging stones at their targets, they suddenly heard a massive sound, following which Dilshan, the deceased, fell down on the ground. PW-2, PW-3 and PW-7 ran away from the scene. It is further the case of the prosecution that it was the appellant herein who had shot the deceased with a pistol, consequent to which the deceased sustained bullet injuries on his person and died. The distance between the appellant and the deceased was about 100 meters.

It is clear from the evidence that it was usual for the boys residing in the adjoining colony to enter the prohibited defence area to pluck fruits. It is also not in dispute that the appellant was residing in accommodation provided by the Army for a period of three months after his retirement.

It is also clear that the appellant shot the deceased while he was attempting to pluck fruit from the defence enclave. The only question is whether the appellant intended to murder the deceased.

As brought out in the evidence of PW-5 Jaya, a domestic help working at the appellant house, the appellant was a short-tempered person, and used to chase the boys who used to jump into the

defence compound to pick almonds. On one occasion, the boys had even damaged the windshield of the appellant's car.

Having perused the evidence on record carefully, and with due regard to the temperament of the appellant during his frequent run-ins with the children, we are of the opinion that the appellant committed the offence in question whilst he was deprived of the power of self-control upon sudden provocation by the children. In our considered opinion, there was no calculated intention or premeditation on his part to commit the murder of the deceased. Hence, the offence committed by the appellant may fall under the first exception to Section 300 of the IPC. Consequently, it can be safely said that the appellant has committed the offence under Section 304, Part II of the IPC.

In view of the aforementioned discussion, we deem it fit to pass the following order:

The appellant is hereby convicted for the offence punishable under Section 304, Part II of the IPC, and is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 2 lakhs, and in default of payment of this fine, to undergo further rigorous imprisonment for three years. The period of imprisonment already undergone by the appellant shall be set off as per the provisions of Section 428 of the IPC. Upon recovery of the fine, the entire amount shall be disbursed to the parents of the deceased as compensation.

The appeal is allowed in part accordingly, with the abovementioned modification in the sentence awarded.

.....J.
(MOHAN M. SHANTANAGODAR)

.....J.
(ANIRUDDHA BOSE)

New Delhi;
November 07, 2019

ITEM NO.107

COURT NO.14

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 259/2015

KANDASWAMY RAMARAJ

Appellant(s)

VERSUS

THE STATE BY INSPECTOR OF POLICE, CBCID

Respondent(s)

IA No. 18885/2018 - IA FOR BAIL)

Date : 07-11-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s) Mr. Ratnakar Dash, Sr. Adv.
Mr. G.sivabalamurugan, AOR
Mr. M. Vivek Bharathi, Adv.
Mr. S. Mahendran, Adv.

For Respondent(s) Mr. M. Yogesh Kanna, AOR
Mr. S. Raja Rajeshwaran, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in part in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

(ASHWANI THAKUR)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)