

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

**CRIMINAL APPEAL NO(S). OF 2024
(Arising out of SLP(Crl.) No(s). of 2024)
(Diary No.50661/2023)**

DAVID STEPHEN

....APPELLANT(S)

VERSUS

**STATE REPRESENTED BY
THE DEPUTY SUPERINTENDENT
OF POLICE & ANR.**

....RESPONDENT(S)

O R D E R

1. Delay condoned.
2. Leave granted.
3. The instant appeal is directed against the judgment dated 25th August, 2014, rendered by the Madurai Bench of Madras High Court, in Criminal Appeal (MD) No. 374 of 2008 preferred by the appellant, for challenging the judgment dated 27th June, 2008 passed by the Court of II Additional Sessions Judge, Tirunelveli, (hereinafter being referred to as 'trial Court') in Sessions Case No. 65 of 2007 convicting the appellant for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1860 (hereinafter being referred to as

'IPC') and sentencing him to suffer imprisonment for life and fine of Rs. 10,000/-, in default to suffer further period of two years simple imprisonment. By the impugned judgment, the High Court rejected the appeal preferred by the appellant and at the same time, reversed the acquittal of the appellant as recorded by the learned trial Court for the charge under Section 449 IPC; convicted him for the said offence and sentenced him to suffer seven years of rigorous imprisonment and fine of Rs. 1,000/- and in default to suffer further period of one year rigorous imprisonment.

4. Having heard and considered the submissions advanced by Mr. S. Nagamuthu, learned senior counsel representing the appellant and after going through the impugned judgment and the material placed on record and so also the judgment dated 27th June, 2008 rendered by the learned trial Court, we are of the opinion that insofar as the conviction of the appellant for offence under Section 302 IPC read with Section 34 IPC and the sentence of life imprisonment awarded to him is concerned, the same is based on apropos appreciation of evidence available on record. Two courts i.e., the trial Court and the High Court have recorded concurrent findings of facts holding the appellant guilty of the charge under Section 302 read with Section 34 IPC and thus, we are not inclined to entertain the appeal so far as the conviction of

the appellant for the offence under Section 302 read with Section 34 of IPC is concerned.

5. However, we are in agreement with the submission of learned senior counsel representing the appellant that the High Court committed grave error in law while reversing the acquittal of the accused as recorded by the trial Court for the offence under Section 449 IPC and sentencing him to suffer seven years rigorous imprisonment. It may be noted that the acquittal of the accused from the said charge had not been challenged either by the State or by the complainant before the High Court and without an appeal being filed for questioning the acquittal of the appellant from the said charge, the High Court could not have exercised jurisdiction so as to reverse the said finding of acquittal and that too, without putting the accused to notice.

6. Hence, the impugned judgment rendered by the High Court is set aside to the extent, the accused has been convicted and sentenced for the offence punishable under Section 449 IPC is concerned. However, conviction of the accused for the offence under Section 302 read with Section 34 IPC and sentence of life imprisonment and fine awarded to him is affirmed.

7. The appeal is disposed of with the above observations and

modifications in the impugned judgment.

8. Pending application(s), if any, stand(s) disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
March 19, 2024.

ITEM NO.13

COURT NO.3

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

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 50661/2023

(Arising out of impugned final judgment and order dated 25-08-2014 in CRLAMD No. 374/2008 passed by the High Court Of Judicature At Madras At Madurai)

DAVID STEPHEN

Petitioner(s)

VERSUS

THE STATE OF TAMIL NADU & ANR.

Respondent(s)

(IA No.66164/2024-CONDONATION OF DELAY IN FILING and IA No.66165/2024-EXEMPTION FROM FILING O.T. and IA No.66163/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 19-03-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s)

Mr. S. Nagamuthu, Sr. Adv.
Mr. M.P. Parthiban, AOR
Ms. Priyaranjani Nagamuthu, Adv.
Mr. R. Sudhakaran, Adv.
Mr. Bilal Mansoor, Adv.
Mr. Shreyas, Adv.
Mr. Kaushal, Adv.
Mr. Amod Bidhuri, Adv.

For Respondent(s)

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

1. Delay condoned.
2. Leave granted.
3. The appeal is disposed of in terms of the signed order.

4. Pending application(s), if any, stand disposed of.

(DEEPAK SINGH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

[Signed order is placed on the file]