Ouseph Vs. State

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Court : Kerala

Decided On : Jan-22-1953

Reported in : 1953CriLJ1803

Judge : Koshi, C.J. and; Kumara Pillai, J.

Appellant : Ouseph

Respondent : State

Judgement :

1. This is an appeal against a conviction and sentence for committing murder. In Sessions Case No. 17 of 1952 the learned Sessions Judge of Trichur found the appellant, Devassy Ouseph guilty of murder in that he caused the death of his wile Eliakutty by cutting her throat with a pen-knife. He has been sentenced to undergo rigorous imprisonment for life. The appeal was tiled from the Central Jail. When it first came up before us for hearing on 8.12.1952 we thought this to be a fit case why the extreme penalty of law should not be inflicted upon him. Notice was accordingly issued to him to show cause against enhancement of the sentence, The appeal and the 'suo motu' revision were heard together. At the request of the appellant he was brought over to the Court at the time of the hearing. The Court also engaged Shri P.M. Commen, Advocate, to appear on his behalf. The learned Public Prosecutor appearing on behalf of the State supported the conviction and the motion for enhancement of the sentence, Shri Commen argued contra on both matters. We also heard what representations the appellant had to make in the appeal and in the revision.

2. The conclusion we have arrived at is that, the conviction and sentence passed by the learned Judge should be confirmed and that the sentence need not be enhanced into one of death.

3. The occurrence took place during the night that followed Christmas Day in 1951. The appellant belonged to Koratti and had three children by his wife deceased Eliakutty. During the second World War he got himself enlisted twice in the Labour Unit which went from this place to Assam. It would appear that since his return after his first trip to Assam he developed an illicit intimacy with an Ezhava woman by name Kunjali. Thereafter he had his board and lodge with her. Prom that time onwards he neglected his wife altogether and she had to maintain herself and the children by her own exertions and the exertions of the eldest child (P. W. 8) a girl of 16 or 17. The other two children (P. Ws. 10 and 11) are boys, one aged 13 and the other 9. The appellant's intimacy with Kunjali continued even after his return from Assam after the second trip. Some six or eight months before the occurrence he went to North Malabar in search of work. He is a wood-sawyer by profession. He was at Edoor in Eratti which was about 30 miles from Tellichery. After he left Koratti for North Malabar before the date of the occurrence he had come home only once. Even on that occasion he did not go to his house or live with his wife though he had always a soft corner in his heart for his children.

Two or three weeks before the Christmas Day in 1951 when the eldest daughter fell ill he made a remittance of some money for her treatment. On 22.12.1951 he sent a sum of Rs. 10/- to her through one Velayudhan (P.W. 6) and sent word that he did not propose to come home for the Christmas but that he would be coming

for the church festival at Koratti during Makarom. P. W. 6 conveyed this message to the daughter on the 41h end also gave her the money. Whether it was a case of changing his mind afterwards or ha wanted to take his people by surprise, after mid-night on the 25th of December he turned up at his house in Koratti. Gaining entrance into the house through the kitchen door he called his wife and wanted her to make bed for him in the northern room of the house. The wife and children were sleeping in the southern room. the eldest child knew of the advent of the father and also heard the father asking mother to make bed for him in the northern room. For some little time the husband shared the bed with his wife and afterwards took her out to the compound stating that the goats kept in the room were proving nuisance. Not long afterwards P. W. 8 as also P. Ws. 10 and 11 heard the cries of the mother to the effect 'Children come running, mother is being murdered'. The cry was from the north-western part of the compound and they immediately went to that place. They found the mother lying down on her back and the father sitting on her chest and cutting her throat. When they went near the father frightened them. They therefore returned to the court-yard and raised an out-cry. Soon the appellant ran away towards the north.

P. W. 8 then called the nearest neighbour P. W 2 who had married their father's sister to the place and when he came he found that Eliakutty was dead. The children told him what had happened and he also started crying aloud. Other neighbours came and one of them P. W. 26 was sent to P. W. 1, a brother of Eliakutty. On his arrival the children told him what they saw. He and P. W. 2 immediately went and informed (P. W. 21) the Panchayat President about what had happened. The Panchayat President came to the scene in the company of P. Ws. 1 and 2 when the children narrated to him what all had transpired. At his instance P.Ws. 1 and 2 went to the Chalakudy police station about five miles away from the scene of occurrence and there P. W. 1 lodged the First Information Be - port at 7 A.M. on the 26th December. After registering the case the Police proceeded with the investigation and the appellant was apprehended at Edoor on the 29th December. When the investigation was completed the case was charge-sheeted and after the usual preliminary enquiry the appellant was committed to the Trichur Sessions Court to stand his trial for the murder of his wife. We have seen what the result of the trial has been. The first question we have to consider is whether the offence has been brought home to the appellant.

4. The main evidence consists of the testimony of the three children. Mr. Commen subjected that evidence to a critical examination but we are unable to accept any Of the criticisms he mad a against their testimony. The appellant was kindly disposed towards his children, especially towards the eldest. There is therefore no reason to think that she or for that matter the two boys would give false evidence against their father. P. W. 2 was the earliest to arrive hearing the cries of the children and to him they told that the father had killed the mother by cutting her throat. He was told that they saw him doing it by sitting on her chest. The dead body was there on the spot bathed in blood. To P. W. 1 who came as sent for by P. W. 2 and P. W. 21 also the children narrated the occurrence. The First Information was given early in the morning and the case is laid before the Court by the prosecution is set out there, We have carefully read through the testimony of these children and we cannot find anything in their evidence to show that the lower Court went wrong in placing rhinos on their testimony to find that the appellant murdered his wife.

5. The prosecution gave some evidence to lend corroboration to the version of the children that the father had come to Koratti during that night. Not less than three witnesses were examined from Koratti to prove his arrival or departure. The lower Court has chosen to accept only the testimony of P. W. 20, the village post-master of Koratti who saw the appellant near his house at 8.30 P. M. on 25.12.1951. They were well known to each other. It is meaningless to think that the witness was giving false evidence and that he was influenced to do that by a Reserve Police Constable. That however was the defence suggestion.

The Circle Inspector of Police interviewed the witness on the 26th December itself. There is also evidence m the case to show that the appellant was absent from Edoor from 24th afternoon, till late in the night on the 26th. P.Ws. 14 to 17 are the witnesses who have given evidence in support of that fact. The lower Court has in the main accepted their evidence. We see no sufficient reason to take a different view. The evidence of P. W. 20 on the one hand and of this group of witnesses on the other therefore strengthens the Court's belief in the

veracity of the testimony of P.Ws. 8, 10 and 11. As noticed earlier the direct evidence these three witnesses gave in Court stood corroborated by the evidence of P.Ws. 1, 2 and 21 who have said that the children told them of what they had seen of the occurrence as each witness arrived. The statement the children made to these witnesses immediately after the occurrence is of great evidentiary value as corroborating their evidence in Court. There is no suggestion even that P. W. 2 or P. W. 21 was not well disposed towards the appellant. P. W. 1 admitted that he disliked the appellant on account of his bad ways.

6. In the circumstances of the case we have no hesitation to agree with the lower Court that the evidence in the case establishes beyond doubt that the appellant's wife died as a result of the injuries she sustained at his hands at the time, and place and in the manner mentioned by the prosecution.

7. We have no reason either to differ from the lower Court's conclusion that the offence committed is one of murder. The deceased had as many as 15 injuries on her person. Majority of them were, no doubt, not very serious and were caused presumably when she was trying to avert serious injuries being inflicted. This however applies only to injuries Nos. 5 to 9 and 11 to 15 in the Pest Mortem Certificate Ex. D. Injuries Nos. 1 to 2 were on the neck and were severally fatal. Injury No. 1 was the most serious injury, and it had cut the wind pipe, trachea and the blood vessels. No inference other than that the appellant intended to cause the death of his wife is possible to be drawn from injuries Nos. 1 to 3, particularly from injury No. 1. The conviction of the appellant for murder has therefore to be upheld. Of the two alternative sentences prescribed for murder the lower Court has not awarded the extreme penalty of death and the appeal has therefore only to be dismissed. It will stand dismissed.

8. Now we have to deal with the revision initiated on the Court's own motion. As our decision is that the sentence need not be enhanced into one of death we do not feel called upon to enter, into a discussion of the various points raised at the bar, suffice it to say for the present, that the course we have adopted in issuing notice to show cause against enhancement is thoroughly according to law and that there is no justification for the view that because the State has not moved for enhancement we should as a rule of caution desist from imposing the death penalty. Whatever-doubts there were on these matters have all now been set at rest by authoritative judicial pronouncements. No useful purpose will however be served by a reference to those authorities here.

9. Courts are agreed that the proper test to be applied in a case like this as to whether the sentence should be enhanced into one of death is whether the sentence of death was the only sentence which could have been passed on the evidence. The mere fact that the High Court, had it been trying the case, might have imposed the capital sentence is not a sufficient reason for enhancement. Even where a. Sessions Judge is found to be too lenient in the exercise of the discretion vested in him by law, the High Court does not interfere except when it is found that the sentence of death was the only possible sentence that could be inflicted.

10. Judged by this test it cannot be stated with the confidence the situation demands that the learned Judge's view that in the absence of evidence as to the exact circumstances under which the attack started it may not be safe to impose the extreme penalty of law is wrong. No doubt the nature of the injuries speaks volumes about the intention of the culprit but an accused person is entitled to the benefit of the doubt even in the matter of the sentence.

11. It has however to be stated that under Section 302, Indian Penal Code transportation for life is the lesser punishment prescribed for murder and not imprisonment for life as was the ease under the Cochin and Travancore Penal Codes. Section 55, I.P.C. confers powers on the State Government to commute a sentence of transportation for life to a punishment for imprisonment of either description for a term not exceeding fourteen years. Section 402, Cr.P.C. also contains provisions regarding commutation of punishment. Once the lower Court decided only to impose the lesser penalty prescribed the proper sentence to be passed was one of transportation for life. We alter the sentence accordingly, that is, to one of transportation for life in substitution for rigorous imprisonment for life passed by the lower Court. Subject to this alteration the notice

issued to the accused in the sentence is discharged. Order accordingly.