Pappan Damodaran Vs. State

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Court : Kerala

Decided On : Nov-11-1952

Reported in : 1953CriLJ1551

Judge : Koshi, C.J. and; Gangadhara Menon, J.

Appellant : Pappan Damodaran

Respondent : State

Judgement :

1. Pappan Damodaran who is the appellant in Criminal Appeal 31 was tried by the learned Sessions Judge of Alleppey for causing the death of his wife, Bhargavi who was in an advanced stage of pregnancy & also for causing the death of her quick unborn child, offences punishable under Sections 301 and 316 of the Travancore Penal Coda corresponding to Sections 302 and 316, I.P.C. The learned Sessions Judge while finding that the appellant caused the death of his wife found that the offence amounted only to culpable homicide not amounting to murder falling under Part 1 of Section 303, T.P.C. (304 I.P.C.) and sentenced him to undergo rigorous imprisonment for a period of 5 years and also to pay a fine of Rs. 100 with the direction that in default to pay the fine he should undergo simple imprisonment for six months. The appellant was also found guilty under Section 316 and in respect of the offence he has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 50/-. In default to payment of this fine he has to undergo simple imprisonment for two months. He is undergoing

imprisonment in the Central Jail and has preferred his petition of appeal from there. Though at the trial he had not admitted the commission of these crimes in his memorandum of appeal he does net dispute the act attributed to him by the prosecution but states he did it in a fit of temper caused by his wife's immoral ways. All that he seeks at the hands of the appellate Court is that he should be dealt with more leniently than what the trial Court has done.

2. Criminal Appeal 111 is by the State and is directed against the acquittal of the appellant of the charge of murder. According to the State there was absolutely no justification to reduce the offence to one of culpable homicide not amounting to murder. These appeals were heard together and Sri C.I. Simon to whom the Court assigned the accused's brief presented the defence case very well.

3. That Bhargavi, the wife of the accused died of the injuries she sustained at the hands of the accused admits of no doubt on the evidence in the case. The testimony of P.W. 1 the deceased's mother and the statement the deceased herself made to the Police which formed the First Information Report clearly show that the accused gave Bhargavi two cuts with a sickle one on the head and the other on the neck. The occurrence was at about 4 P.M. on 1.2.1951 and Bhargavi died at about 4.15 P.M. on 2.2.1951. That her death was the direct result of the injuries caused to her is amply Droved by the medical evidence in the case. In his statement before the trial Court the accused admitted all but giving these cuts to Bhargavi. The circumstances leading to it as also the incidents that followed it are admitted by him leaving a void as it were with reference to the occurrence proper. However in his memorandum of appeal he has categorically admitted that he caused the death of Bhargavi and in view of that statement it is unnecessary to enter into greater details concerning the proof of the occurrence.

4. The real point we have to decide is whether the learned Judge was in the circumstances of the case justified in reducing the offence into one of culpable homicide not amounting to murder. We are afraid there was hardly any justification for it. The learned Judge applied Exception I to Section 299, T.P.C. (300 I.P.C.) and held that the accused inflicted the injuries on Bhargavi whilst he was deprived of the power of self-control by grave and sudden provocation. Even the statement

which the accused made at the trial does not warrant that inference. No doubt he did not admit the commission of the crime but we refer to his statement to show that there is not a title of evidence to substantiate the learned Judge's conclusion. The actual occurrence as we have already noticed is proved by the testimony of P.W. 1 and by the statement which the deceased made before the Police which by reason of her death forms substantive evidence in the case. These two pieces of evidence give absolutely no justification for an inference of the nature the learned Judge has made. Be expatiates much on the motive that Bhargavi was a woman of loose character and that it must have led the accused to the commission of the crime. When a point is in issue whether a particular person has committed a crime or not it might be material to examine whether he had a motive for it but having found that the crime was committed by that person that he was actuated by high moral ideals is no ground for mitigation of the offence. In fact in deciding the point as to the nature of the offence the motive is thoroughly irrelevant. The learned Judge then goes on to give free play to his imagination and states that Bhargavi must have used offensive language which made the accused lose his self-control. To repeat what we have said before there is no material whatever in the case to warrant that inference. It is mere speculation which a Court is not entitled to indulge in. The accused's statement at the trial mentions that during the previous night he saw Bhargavi misbehaving with one Sreedharan P.W. 10 in the case. His statement is to the effect that in the dead night on his return after witnessing a Kathakala-shepam he saw Sreedharan and Bhargavi inside the room Bhargavi used to sleep. The statement goes on to state that they were lying naked and that on his asking Bhargavi to open the door she refused to do it and that it was only when her mother (P.W. 1) intervened that she opened the door. It was said that he caught hold of Sreedharan but had to let him go when he threatened him with a dagger. It is difficult to believe the incident. Had such a thing occurred and the accused had then caused the death of Bhargavi or Sreedharan one could understand the Court reducing the crime to one of culpable homicide not amounting to murder. The incident even if true will not justify the course the learned Judge adopted in this case to reduce a murder which took place more than 12 hours after the incident, into one of culpable homicide not amounting to murdex. The learned Judge also refers to the evidence of P.W. 10 to the effect

that the wort rear the house of Bhargavi's parents just before the occurrence to find out whether her brother P.W. 3 was there. The learned Judge thinks that his presence who according to the accused was reputed to be his wile's paramour might have upset his mental balance. These are if we may say so mere excuses to reduce a serious crime into a minor one and a Court ought not to resort to such wild speculations. When the prosecution evidence or even the statement of the accused does not disclose any circumstance to warrant any such inference being drawn the Court has no justification to give such free play to such imagination. The decision that the offence is only one of culpable homicide not amounting to murder has therefore to be set aside. In doing that we dismiss Criminal Appeal 31 and allow Criminal Appeal 111.

5. Setting aside the conviction and sentence under Section 303, Part I, T.P.C. we convict the accused of the offence under Section 301, T.P.C. (302 I.P.C.) and sentence him to undergo rigorous imprisonment for life.

6. Before concluding a word has to be said about the conviction and sentence under Section 316. As at present advised it appears to us that the conviction and sentence under that section cannot be justified. Illustration to Section 316 as also recognised Commentaries on Penal Code would seem to indicate that the section has no application to a case where the act attributed to an accused person has resulted in the causing of death of a pregnant woman. See Mayne's Criminal Law of India, 4th Edition, page 542 and Dr. Nandalal's Penal Code Volume II page 1559. The forum (?) of a charge under Section 316 occurring in this as also the Commentaries by Rathanlal and Dr. Gour would also support this view. Further even if a separate conviction is not open to exception separate punishment would seem to offend Section 71, I.P.C. The legality of the conviction or the sentence under Section 316 has not been raised before us by either side. The appeal memorandum in either case does not refer to it and as the question did not receive sufficient attention during the arguments at the Bar we do not think it necessary to express any final opinion on either aspect. As we have found the accused guilty of murder and sentenced him to undergo rigorous imprisonment for life we do not consider that the conviction or sentence under Section 316 should be retained. Accordingly we set aside the conviction and sentence under that Section.

7. Criminal Appeal 31 will stand dismissed and Criminal Appeal 111 is allowed.