

State Vs. Velappan Kochunny

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Court : Kerala

Decided On : Nov-14-1950

Reported in : 1952CriLJ1087

Judge : Govinda Pillai, J.

Appellant : State

Respondent : Velappan Kochunny

Judgement :

ORDER

Govinda Pillai, J.

1. This petition is filed on behalf of the State to revise an order passed by the Second-Class Magistrate, Kanayannur, Emakuiam, granting bail to the accused in C.R. 105 of 1950 of Ernakulam North Police Station and to set aside the order. At the time the Magistrate granted bail the Police had not laid tile charge against the accused. Subsequently the charge sheet was filed.

The prosecution case was that the accused who was a Police Constable attached to the Ernakulam North Police Station was going in mufti after duty at about 8.30 P.M. on 1.9.1950 to take his meals, that he was then informed by the first witness in the charge that gambling was going on in one Govindan Kesavan's house near the Padmana Talkies, that he straightaway went there, entered the house and

demanded of the persons there to place the money they had before him, that all except two persons there believed him to be a thief and so raised an alarm, that Govindan Kesavan who was taking his meals inside rushed to the place and caught hold of the accused when he unsheathed his dagger and stabbed Kesavan twice on the left chest and once on the left arm pit, that he also stabbed two others who tried to intervene, that he left the place then and that as the result of the injuries sustained Kesavan died the same night at 11-30.

2. The accused, after his arrest moved for bail. The learned Magistrate granted the same. The charge against the accused is under Sections 281, 304 and 428 of the Cochin Penal Code. The Magistrate in granting bail stated that the accused, though was not within his rights to go to the house without a warrant issued by a proper authority for the arrest of the gamblers in a private residence, could be deemed to have been acting in good faith, that he had inflicted the stabs without premeditation, that he might have the plea of self-defence, that such plea is not to be weighed in 'golden balance' and that the offence might not come under Section 281.

Section 397(1) of the Cochin Criminal P.C. lays down that if there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life he is not to be released on bail. When an application for bail is made in the initial stage of the case, the Magistrate may expect the prosecution to satisfy him that there is a genuine case, and that it will be able to produce 'prima facie' evidence in support of the charge, but he cannot expect at that stage to have evidence establishing the guilt of the accused beyond reasonable doubt vide *Ke-Bhav Vasudeo v. Emperor* AIR 1933 Bom. 492. as pointed out in *Emperor v. Muhammad Panah* 36 Cri LJ 711 (Sind) the section speaks only of reasonable grounds and not evidence. The Court is not to go at a tangent in order to find out possible excuses for granting bail. I got the case diary in the case and perused the same. At this stage I can only say that the learned Magistrate has proceeded on fanciful grounds. A police Constable like every other person, is expected to know that the infliction of injuries with a dagger on vital parts of the body is likely to cause death of the injured. The attitude taken by the Magistrate in this case is deplorable that it appears that he has not taken a

detached view of the materials placed before him. I am satisfied that at this stage the accused had not made out a case for bail. The order passed by the lower Court is set aside and bail to the accused refused. The learned Magistrate will see that the accused is taken to custody forthwith and the enquiry expedited. It is open to the accused to apply for bail after the occurrence witnesses are examined by the Magistrate.

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