State Vs. Kochan Chellayyan

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Court : Kerala

Decided On : Oct-19-1953

Reported in : 1954CriLJ1418

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

Appellant : State

Respondent : Kochan Chellayyan

Judgement :

Koshi, C.J.

1. The State has preferred this revision to correct a palpable error made by the learned Sessions Judge of Nagercoil in awarding the sentence upon a person whom he convicted of murder and to have a proper sentence passed by invoking this Court's powers to enhance a sentence passed by a subordinate Court. The occurrence which gave rise to the case (Sessions case No. 7 of 1952) took place on 25-4-1951 i.e., after the Indian Penal Code was extended to this State under the Part B States (Laws) Act, 1951. Section 302, Indian Penal Code, enacts that whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine. The learned Judge found that the accused before him 'had committed an offence of murder punishable under Section 302, I.P.C.' and in recording that finding he said:

As for the charge of murder under Section 302, I.P.C., I have already found in para. 10 supra that the accused inflicted the fatal multiple injuries on Meenakshi with the intention of causing her death, without any justification Whatsoever. I have also found that there were practically no mitigating circumstances made out. Therefore the accused had committed an offence of murder punishable under Section 302, I.P.C., as the case does not fall within the exceptions specified under Section 300, I.P.C. The assessors also are unanimously of the same opinion, I therefore find him guilty of an Offence of murder punishable under Section 302, I.P.C. and convict him accordingly.

2. Notwithstanding the above finding the sentence that has been passed is rigorous imprisonment for life. In passing that sentence the learned Judge observed:

I have already convicted the accused under Section 302, I.P.C. for having murdered Meenakshi. As no mitigating circumstances are made out, the accused has to be given the maximum sentence as provided for in the section, I therefore sentence him to undergo rigorous imprisonment for life.

3. It is clear that the learned Judge is in error in passing a sentence of rigorous imprisonment for life where he ought to have imposed a sentence of death or one of transportation for life. Under the Travancore Penal Code as it stood amended by a Proclamation dated 11-11-1944 rigorous imprisonment for life was the only sentence that could have been passed against a person convicted of murder. Evidently the learned Judge overlooked the fact that under the Indian Penal Code the punishment prescribed for the offence of murder was not the same as that the Travancore Penal Code as amended by the Proclamation referred to provided. On the finding that there were no mitigating circumstances the learned Judge ought to have sentenced the accused to death. This is the position which the State takes in the revision.

4. However in showing cause against enhancement, Shri K. Nilakanta Menon advocate, who held a 'dock-brief' sought to avail of the provision in Sub-section (6) of Section 439, Criminal P. C., and attempted to show that on the facts established in the case, the conviction for murder was bad and that, in any event, the trial was

vitiated by non-compliance with a mandatory provision of the Code, to wit, Section 465. This section prescribes the procedure to be followed when a person committed for trial before a Court of Session or a High Court appears to be of unsound mind and consequently incapable of making his defence. As the arguments before us on this aspect showed that there was merit in the point we did not hear Counsel as to whether there were grounds for the mitigation of the offence. When the arguments concluded we made it clear that we will set aside the conviction and sentence and order a retrial.

5. Section 465, Criminal P. C. (Act V of 1898) is in these terms:

If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and If the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged.

6. In paragraph 4 of the judgment of the Court below there is an account of the accused's behaviour at the commencement of the trial and thereafter till the trial concluded as also of the steps the learned Judge took to meet the situation. To appreciate the argument raised before us we consider it necessary to extract that paragraph here in full:

The accused's statement was recorded by the Magistrate in the lower Court and the same was duly certified by him. In this Court on the first day when the charge was read and explained to him he would not give any reply at first. He began to show some signs of mental derangement. But when he was cajoled, he began to give very pertinent and sane answers to all the questions put by me. Thereafter the charge was read and explained to him once again. He at first said that he understood the charge and that he did not commit the offence but immediately pretended that he was not mentally all right and refused to sign the statement. As the Court and the assessors were of opinion that the accused was in a fit condition to understand the proceedings, P. W. 1 was examined. However, on that day I

stopped the examination of other witnesses for the day and sent a requisition to the Medical Officer in charge of the Government Hospital, Nagercoil to examine him and send a report.

The Medical Officer after examining him, certified that he was not a lunatic as defined by the Lunacy Regulation and sent a report to that effect before 11 A. M, on 10-6-1952. After receipt of the said report, I started trial on 10-6-1952. All the time the trial lasted the accused appeared to be very calm and attentive. After the close of the prosecution evidence when the statement made by the accused in the lower Court was read over to him for purpose of exhibiting the same, he would not answer any question put to him by the court. He was simply pretending. The assessors also agreed with me in holding that the accused was in a fit condition to understand all the proceedings held in Court but that he was deliberately declining to answer the questions put by the Court. Thereupon I had the said statement of the accused proved by examining P. W. 14 the Circle Inspector of Police who swore that he was present when the accused was examined in the lower Court and had it accordingly marked as Ext. W.

As I was convinced that this was not a case where the accused, though not insane, could not be made to understand the proceedings, but was a case where the accused was wantonly refusing to answer the questions I did not think it advisable to report to High Court under Section 341, Criminal Procedure Code. However because of the accused's adamant attitude in refusing to answer questions the Court could not examine him for the purpose of explaining any circumstances appearing in the evidence against him.

7. To complete the picture we have to refer to what transpired before the commencement of the trial. The trial began on 9-6-1952, but on 7-6-1952 the jailor who had charge of the accused at the time reported to the learned Sessions Judge that the accused was showing signs of insanity and that the learned Judge should therefore pass orders to send him to the hospital. The request was complied with and orders were passed directing the Inspector of Police, Kottar to arrange to keep the accused in the Government Hospital, Nagercoll and at the same time cause his production in Court on the date fixed for the commencement of the trial (9-6-

1952) and on subsequent days. On 9-6-1952 after the case was taken up the learned Judge made a memorandum to the following effect:

The accused was brought before the Court. The charge against him was read and explained. The accused was asked by me as to whether he had understood the same. He was giving repeated replies (P. W. 1 must be examined).

Apparently, he was pretending to be devoid of understanding. Then a series of questions was put to him. He was able to understand every question put to him and give relevant answers. But when he was questioned about the charge, he would again give the above answer. As I was convinced that he was not mentally affected, I again questioned him about the charge when he gave the answers and the same were recorded.

8. The procedure adopted by the learned Judge in adjourning the trial after the examination of one witness and calling for a certificate from the , Medical Officer clearly indicates that the learned Judge changed the view he first took regarding the accused's sanity. The learned Judge at least began to doubt whether the accused had an unsound mind. Under such circumstances what the learned Judge ought to have done was to hold a proper enquiry judicially regarding the question of the suspected unsoundness of mind of the accused and the consequent incapacity of making his defence.

9. Section 465 contemplates two stages of I procedure. The first stage laid down is that it must appeal to the Judge that the accused placed on his trial was of unsound mind and incapable of making his defence. The next stage that was to follow when it appeared to the Judge that the accused was of unsound mind and, consequently, incapable of making his defence was that the fact of such unsoundness of mind and incapacity should be enquired into on the materials placed before the Court. Where it did not appear to the Judge that the accused was of unsound mind or that he was incapable of making his defence, it was not therefore necessary, much less was it incumbent upon the Judge, to adopt the procedure provided by the second part of the section, namely, to hold an enquiry as to the unsoundness of mind of the accused placed on his trial, for the purpose of ascertaining whether he was incapable of making his defence. Emperor v.

Durga Charan Singh AIR 1938 Cal 6 (A).

10. The narration of the events that took place in this case from 7-8-1952 till the conclusion of the trial shows that this is not a case where the Judge was absolutely certain of the accused's sanity. No other inference is possible from the Judge directing the accused to be detained in the hospital under police custody or from adjourning the trial after specifically calling for a report from the medical officer in charge of the hospital. The medical officer's letter does not form part of the evidence in the case nor has he been examined. There has also been no record that the assessors were asked before proceeding with the trial whether they were satisfied about the accused's sanity. No doubt the judgment mentions that they were satisfied about his sanity but no record is kept in the case file regarding their opinion. Further, the learned Judge would appear not to have been alive to the fact that 8. 465 did not speak of unsoundness of mind in the same terms as the Lunacy Act.

11. In short, though this was a case where the provisions contained in Section 465 had every application, the learned Judge did not conform to the procedure prescribed by the section, The conduct of the Judge clearly shows that his mind was not free from all doubts as to the accused's mental state at the time of the trial and in these circumstances the failure to follow the mandatory provision of the section must vitiate the trial. 'Santokh Singh v. Emperor AIR 1926 Lah 498 (B) and; Bamnath v. Emperor AIR 1930 All 450 (C). The head-note to the latter case which correctly sets out the sense of the decision may usefully be quoted here.

Where there is something in the demeanour of the accused which would raise or raised doubt in the minds of Judge, jury, assessors or both, the Court cannot proceed with the trial unless the Court comes to a decision and is satisfied that the accused is not of unsound mind and consequently not incapable of making his defence under Section 465. The absence of any proper trial and finding as to the question of accused's capacity to make his defence vitiates conviction and sentence.

12. The Judge doubted the sanity of the accused, but never held a preliminary trial as envisaged in the section to satisfy himself or the assessors that there was

nothing wrong about the accused's sanity or his capacity to make his defence. What steps he took to clear the doubt were all irregular, half-hearted and haphazard. To repeat what we said earlier there is no record of any proceeding by which the Judge put to the assessors or in any other way with their aid tried, the question of the accused's capacity to make his defence, and came to any decision with the aid of assessors on that point. The two decisions referred to clearly lay down that the failure to follow the mandatory provision of Section 465 must vitiate the trial. This is also the view which the Calcutta High Court took in Radhanath Mandal v. Emperor AIR 1927 Cal 289 (D). The following quotation from that decision will appear to us to be apposite in this context:

It appears to us, however, that according to the provisions of Section 465, Criminal P. C., the learned Judge ought to have put to the jury as a preliminary issue to be tried by them as to whether or not the jury were satisfied that Radhanath was a person of unsound mind. This ought to have been done the moment the question of the insanity of Radhanath was raised. On that point evidence should have been given or required as to whether Radhanath was a person who could stand his trial and was in a position to understand the proceedings which were going on in Court. No evidence whatever was led on that point, and although we are not unmindful of the fact that the learned Judge did put to the jury the question of the insanity of this particular accused, it was not put in the way and form required by Section 465, Criminal P. C.

We feel, therefore, that we have no other alternative but to set aside the conviction of and the sentence passed on the accused Radhanath Mandal and to direct that the matter should go back to the learned judge to try the issue referred to above before a fresh jury. In the event of the jury being of opinion that Radhanath is a person of unsound mind, further proceedings in the case against Radhanath should be postponed and the jury discharged in terms of Section 465, Cri. P. C.

13. In the circumstances no alternative other than to quash the conviction and the sentence and direct a retrial appears to be open to us. The view taken in the three cases cited above regarding the illegality of the trial accords with the view the Privy Council expressed in Pulukuri Kottaya v. Emperor AIR 1947 P.C, 67 (E),

There the Judicial Committee observed that when a trial is conducted in a manner different from that prescribed by the Code, the trial is bad, and no question of curing an irregularity arises.

14. In a very early Bombay case - Reg v. Hira Punja (1863) 1 Bom HCR. 33 (F), while quashing a conviction for murder and the sentence of death passed by the Sessions Judge a Division Bench is seen to have given the following instructions to the Sessions Judge who was directed to hold a retrial:

The Honourable Judges of Her Majesty's High Court of Judicature find that on your entertaining doubts as to the sanity of the accused, you should not merely have put questions to him, but should have tried the fact of such unsoundness of mind by examining the Civil Surgeon or some other Medical Officer, and by taking such evidence as might have been procurable from the village at which the accused resides with the view of ascertaining whether the accused had, at any time prior to the commission of the crime, exhibited symptoms of insanity. Their Lordships consider that full enquiry upon the point of the prisoner's sanity is necessary.

15. After adjourning the trial to get the medical officer's opinion the learned judge should have recommenced the trial and not resumed it at the point at which it has been left off at the time of the adjournment. Nor was the learned Judge right in acting upon a letter of the medical officer which was not proved in the case. In - 'The Acting Government Pleader v. Kunnukam Chetty 2 Weir Cri 582 (G), the Madras High Court had occasion to condemn such practices. In so doing the learned Judges said:

The procedure adopted by the Judge was not legal. As it had appeared to him that the prisoner had not been in his right senses at the first stage of the trial, he should have commenced the trial de novo after finding with the aid of the assessors (whom the Judge does not appear to have consulted) that he was capable of making his defence. Sections 465 and 468, Criminal P. C. The Judge, moreover, in finding the prisoner capable of making his defence at the March Sessions, acted upon a letter of the Zillah Surgeon, which was not legal evidence for himself and the assessors.

16. When this case goes back to the lower Court if the Judge finds reasons to doubt the sanity of the accused, the proper thing will be to keep the accused under observation for two or three weeks in the Government Hospital and then take evidence with regard to his sanity before deciding whether the trial for the offence should be commenced or not. If the Judge entertains a doubt about the sanity it will be for the prosecution to establish that the accused is sane and capable of making his defence. Vide Shib Das v. Emperor AIR 1924 Cal 713 (H) and; Emperor v. Gopi Mohan Sana AIR 1925 Cal 479 (I).

17. Before parting with this revision there are other errors or irregularities also to be pointed out. In concluding paragraph 4 of the judgment (extracted elsewhere in this judgment) the learned Judge has stated that he did not think it advisable to refer the case to the High Court under Section 341, Criminal P. C. The provisions of that section do not apply to a person who has an unsound mind. Those provisions apply to persons who are unable to understand the proceedings from deafness or dumbness or ignorance of the language or other similar causes.

18. In the examination of the accused when the prosecution concluded their evidence the accused took an. unhelpful attitude by declining to answer the questions put to him by the Court, but consistently with the view the learned Judge held that the accused was of sound mind we cannot understand why the learned Judge did not ask him whether he means to adduce evidence. That such a question should be put to an accused person is a mandatory rule relating to the trial of sessions cases is clear from the language of Section 289(1), Criminal Procedure Code. It is not a mere formality but it is an essential part of a criminal trial. Whether the accused, gave the answer or not was a different matter. There is no reason why the Judge should not have done his duty. Even if the question of in-validating the trial on account of non-compliance with the provisions of Section 465 did not arise in the case, we would not have hesitated to quash the conviction and the sentence and to direct a retrial on the strength of this omission alone.

19. In the result we set aside the conviction and the sentence of the accused and direct him to be retried according to law. Order accordingly.