In Re: Peethambaran

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Court : Kerala

Decided On : Oct-24-1958

Reported in : AIR1959Ker165; 1959CriLJ596

Judge : Koshi, C.J. and; M.S. Menon, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 341; Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Ref. No. 17 of 1957

Appellant : In Re: Peethambaran

Advocate for Pet/Ap. : P. Karunakaran Nair, Adv.;Public Prosecutor

Judgement :

Koshi, C.J.

1. In this case the accused a dear and dumb man, has been convicted of murder under Section 302, Penal Code by the learned Sessions Judge, Trivandrum and the proceedings have been submitted to this Court under Section 341. Criminal P. C. S. 341, Criminal P. C. reads as follows :

'If the accused, though not insane, cannot he made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court, if such inquiry results, in a commitment, or if such

trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.'

In committing the accused to the Court of Session, the learned First Class Magistrate, Varkala, who conducted the preliminary enquiry forwarded the proceedings to this Court with a report of the circumstances of the case as enjoined by the provision of law quoted above. Pursuant to that report, in Criminal Reference No. 3 of 1957. a Division Bench (Koshi, C. J. and Vaidialingam, J.) directed the learned Sessions Judge, Trivandrum to conduct the trial. That order was made on 17-6-1957. It invited the learned Sessions Judge's attention to the decision in In re Narayanan Nair, 1957 K. L. T. 39: ILR (1957) Kerala 1: (AIR 1957 Kerala 9) for guidance and also directed the learned Judge to afford the accused such special facilities as the circumstances warranted to enable ham to understand the proceedings, to give him as fair a trial as possible and to ascertain whether the accused had sufficient intelligence to understand the criminal character of the act attributed to him.

In his judgment convicting the accused the learned Sessions Judge has observed that as it was not possible to find out any relation of the accused to interpret the proceedings to him two persons who were acquainted with him were examined as court witnesses at the commencement of the trial and that their services were utilised by the court to communicate to the accused by gestures the substance of what each of the witnesses had testified. The accused belonged to some unknown place and the court was therefore not in a position to get at any relation of the accused to serve as an interpreter. As directed in the order of this Court in Criminal Ref. No. 3 of 1957, the learned Sessions Judge had also made available to the accused the services of a fairly senior counsel to defend him.

All the same the learned Judge did not feel satisfied that the accused had fully understood the purport of the testimony of the witnesses examined against him. As directed by the learned Judge the court witnesses explained the substance of the prosecution evidence to the accused by means of gestures and his answers during his examination under Section 342, Criminal P. C. were also made by

gestures. The court understood him to deny the charge and to plead not guilty.

On a careful evaluation of the evidence the learned Judge has found that the offence of murder arraigned against the accused was well brought home to him, that though he was deaf and dumb he was perfectly sane and that he was intelligent enough to understand the criminal character of the act committed by him. Conformably to the provisions in Section 341, Criminal P. C. the learned Judge has therefore, after convicting the accused of the offence of murder, forwarded the proceeding to this Court to pass such orders as the Court deems fit. (2) Having found that the accused was a sane deaf-mute who could not be made to understand the proceedings of the trial, the learned Judge rightly invoked the provisions of Section 341, Criminal P. C. to make this reference after finding him guilty and convicting him of murder, without at the same time passing the sentence therefor. It is settled law that the provisions of the said section could be invoked only when the accused is unable to follow the proceedings, see King-Emperor v. Dada Mahadu, 3 Bom LR 371, Emperor v. Gunga, AIR 1927 Lah 799 (1), Isso v. Emperor, AIR 1943 Sind 237, The Crown v. Naru, AIR 1950 EP 174 and In re Pondavi Jaddidu, (1954) 2 Mad LJ (Andhra) 226.

These cases hold that though an accused is a deaf-mute, if he understood what was being alleged against him by the prosecution and its witnesses, Section 341 would have no place and that the court concerned should deal with him in the ordinary way and dispose of the case. In the Sind case, AIR 1943 Sind 237, Davis, C. J. and Weston, J. have elaborately considered the scope and amplitude of Section 341, Criminal P. C.

3. Another preliminary fact which we would advert to at this stage about a reference under section 341, Criminal P. C. is that the court making the reference should record a finding as to whether the accused, though a deaf-mute had sufficient intelligence to understand the criminal character of the act committed by him, see Emperor v. A Deaf and Dumb Accused, ILR 40 Bom 598 : (AIR 1917 Bom 388) and Emperor v. Gunga, AIR 1930 Lah 64, In this case the learned Judge has definitely found that the accused knew the nature of the act he had committed and that his conduct, both previous and subsequent, made no other

conclusion possible. On a perusal of the evidence in the case we are inclined to agree, with that view.

4. We shall now proceed to examine the evidence to find whether the learned Judge was right in finding tile accused guilty of murder and convicting him of that offence. The opening paragraph of the lower Court's judgment correctly summarises the prosecution case and that may conveniently be set out here :

'The accused, Peethambaran alias Pottan, has been committed to this court, to stand his trial for an offence under Section 302, I. P. C. He was employed as a domestic for about three years in a house called M. P. Mandirarn, the residence of P.W.2, a Sub-Registrar in Government service. The deceased Soman was a boy, about 14 years old at the time of his death, and was also a domestic in the same house, for a few weeks. According to the prosecution, the accused developed a hatred towards the deceased, as the latter's advent in the household, spoiled his chances for petty stealing while making purchases of sundry articles from the shop, and interfere with his criminal intimacy and relationship with one Pava, a woman who was also attached to the house-hold. Accordingly, on the night of 10-6-1956 A. D., corresponding to the 28th Edavom 1131 M. E., the accused was said to have decoyed the deceased to several places and finally hacked his neck with a chopper, near the foot of a mango tree by the side of tile Ouilon-Trivandrum road, a little to the north of the 5th furlong stone after the 28th mile. On the next day, P.W.1 the son of P.W.2, received information from his uncle P.W.18, that Soman lay dead on the road side, P.W.1 immediately reported the matter to the Varkala Police Station, whereupon, investigation was taken over, after the completion of which, a charge-sheet was laid against the accused.'

The evidence to connect the accused with the crime of murdering Soman is entirely circumstantial. Before examining that evidence it may however be pointed out that the medical evidence is definite and conclusive that Soman met with his end at the hands of an assassin. The post-mortem certificate (Ext. P-4) showed that he had sustained as many as eleven injuries of which sis were simple ones while the remaining five were the result of deliberate and intentional attack with a heavy and sharp weapon.

According to Pw. 4 who conducted the autopsy the fatal injury was one on the left side of the neck, 10'x6'x8' almost reaching in depth as far as the skin on the right side of the neck in its whole length, and cutting through all the muscles, nerves, great and small blood vessels and the inter vertebral discs, the head hanging out and held to the body only by the skin and the platysma muscle on the right side. Besides this deadly injury there were two other injuries on the neck, one an incised wound 2'x 1 1/2'x 1 1/2' situated 4' below the centre of the nape of the neck and another incised wound 2'x 1/4'x1/2' at the left side of the neck.

There was a fourth injury on the top of the left shoulder 2 1/2'x 1 1/2'x 1/2. Of the remaining seven injuries the medical witness would have it that six of them could have been caused when the victim tried to ward off cuts with a chopper, but that the other one must also have been an intentional cut. It is clear that Soman died as the result of a murderous attack by an assassin and that in the absence of recognised exceptions or extenuating circumstances, his assassin should be held to be guilty of murder.

The circumstances upon which the lower Court depended to connect the accused with the crime are:

(i) that he had strong motive to do away withSoman's life;

(ii) that he was found leaving the scene or occurrence immediately after the commission of the crime with a chopper;

(iii) that the accused and the deceased were seen together in different times during the fateful night:

(iv) the conduct of the accused after the occurrence;

(v) the presence of blood stains on his cloth; and

(vi) the recovery of a blood-stained shirt and blood-stained chopper as pointed out by the accused.

5. We have carefully examined the evidence under each of these heads and are inclined to agree with the learned Sessions Judge's conclusion that the cumulative

effect of these circumstances is to point in the direction of the accused being the murderer of Soman and to exclude the possibility of any one else having had anything to do with the commission of that crime. In other words these circumstances are consistent only with his guilt and are inconsistent with any reasonable hypothesis of innocence. Pws. 10, 15 and 16 are very close neighbours to the place where Soman's dead body was found lying.

All of them knew both Soman and the accused before and Pw. 16, whose was the nearest house to the scene, saw the accused leave the place with a chopper in bis hand. He like Pws. 10 and 15 came out hearing Soman's cries. The cry was to the effect that 'Pottan' was Cutting or killing him. Pws. 10 and 15 fully corroborated Pw. 16, though their evidence as to the identification of the accused was not so clear or definite as that of Pw. 16, but they all definitely stated that they found Soman lying dead on the road side with multiple injuries on his person. It was past 1 O' clock in the night when they heard Soman's cries and saw his dead body.

6. Both Pws. 1 and 5 give evidence that in the evening of the fateful day at about 7-30 or 8 the deceased wanted their permission to go out in the company of the accused to witness Kambadikali at Pw. 7's residence and they refused him permission as Pw. 2 (the father of Pw. 1) and other members of the family were not in the house that night. Pw. 5 is brother-in-law of Pw. 2. One Ananthan, a son of Pw. 7 was giving instructions to some people in Kambadikali and that place was just half a furlong or so away from the house of Pw. 2.

It would however appear that notwithstanding the refusal of permission by Pws. 1 and 5 the accused and the deceased went out that night evidently after Pws. 1 and 5 retired to sleep. Pw. 7 gave evidence to the effect that they (the accused and the deceased) had gone to his place when it was past 10 O' clock in the night. As Ananthan was ill there was no Kambadikali that day and so they left the place immediately.

The other witnesses who saw them together later in the night were Pws. 3, 6, 8, 9 and, 12. Among these witnesses the lower Court has not acted upon the evidence of Pw. 12, but has believed ail the remaining witnesses in the group and they saw the two persons together at different places between 10 P.M. and 11-30 or 12 O'

clock in the night. We do not think it necessary to specify at what place and time each of them saw the accused and the deceased together.

We would however add that Pw. 6 saw the accused alone at 2 A.M. and that in the morning of 11-6-1956 Pw. 8 had told Pw. 18 (a brother-in-law of Pw. 2) that he had seen the accused and the deceased together the previous night. On intimation being sent to him by Pw. 1 that Soman was found missing from the house Pw. 19 had gone out in search of Soman and it was then that Pw. 8 reported to him that he had seen the accused and the deceased together the previous night. Pws. 3 and 6 are close neighbours of Pw. 2.

7. During the early hours of the morning of 11-6-1956 (at about 3 or 4 A.M.) the accused knocked at the door of the room where Pws. 1 and 5 were sleeping and when they opened the door he showed gestures to them to indicate that Soman was not seen in the place where he was sleeping or rather that he had disappeared. According to them the accused appeared to be in an agitated state of mind at that' time and he even made them understand that he would like to sleep in their room rather than in the room where he usually used to sleep. Soman and the accused used to sleep in the same room, Pws. 1 and 5 did not permit the accused to sleep in their room. They looked all over the place for Soman, but not finding him they retired to bed and tbe accused also went and took his bed at the usual place. Pws. 1 and 5 found some blood-stains on the cloth worn by the accused and in answer to their query he made them understand that he hid some itches on his person and in that way accounted for the blood stains. On the evening of 11-6-1956 the police came to the house and recovered the blood-stained cloth (M. O. 5) from the accused.

The next day, that is on tbe 12th they came again in the evening and on the accused being interrogated, of course by gestures, he pointed out to them the place where the blood-stained shirt and the chopper were kept by him and the police recovered those articles also. The shirt (M. O. 4) was bundled up and placed inside a copper pot which was covered by a pot and the chopper (M. O. 7) was concealed underneath. On chemical analysis M. Os. 4. 5 and 7 were found to be stained with human blood.

8. When to these circumstances the fact that the accused had reasons to he inimically disposed towards the deceased is added the conclusion that he had done away with Soman's life appeared to us to be irresistible and that is the lower court's conclusion also. At the time of the occurrence the accused had been a servant under Pw. 2 for Over three years, but Soman joined there only two or three weeks prior to the occurrence. After Soman's advent Pw. 2, his wife and other members of the family came to know that the accused used to make petty thefts out of monies entrusted to him for purchasing provisions and household articles.

So thereafter Soman used to be deputed to make the purchases and that irritated the accused. Besides, the accused would seem to have been on terms of illicit intimacy with a maid-servant in the house, one Pava and Soman reported about it to Pw. 2, his wife and others. When the accused came to know that Soman had told their master about it he beat Soman and even threatened that he would kill him. That was two or three days before the occurrence. These incidents made Pw. 2 warn the accused that if he continued to misbehave he would even be sent away.

The accused also used to report to Pw. 2 that Soman was a useless or a lazy fellow and that he should be sent away. It was againsi the background of these strained relationship that the accused wanted to decoy Soman to some strange place in the dead of the night and put an end to his life. Soman was only 14 or 15 years of age at the time of his death and the youngster must have been offered sufficient allurements to accompany the accused during his perambulations.

9. We agree with the lower Court that the circumstantial evidence established beyond all doubt that the accused had perpetrated the murder of Soman. The evidence that he was seen leaving the scene of the murder with a chopper and the recovery of the blood-stained chopper and the blood-stained shirt as also the blood-stained cloth more than anything else give to our minds convincing proof of the accuseas guilt. It is significant that the deceased was made to seek permission of Pws. 1 and 5 to go out in the night in the company of the accused and that even though permission was refused they did go out. There is very reliable evidence

about it. The accused's conduct in reporting about the alleged disappearance of Soman to Pws. 1 and 5 during the early hours of the morning of 11-6-1956 is also significant. We therefore confirm the conviction of the accused for the offence of murder.

10. We have already noticed that to sustain a conviction against person subject to such physical infirmities as the accused in this case is, the court trying him should not only be satisfied that he is sane but also that he is of sufficient intelligence as to know the criminal nature of the act he commits. Reference to relevant authorities on the point has also been made in an earlier part of this judgment, The evidence of Pws. 1, 2, 5 and 18 who have known the accused sufficiently long clearly shows that he though deaf and dumb is possessed of ordinary intelligence to choose between right and wrong.

He was managing the house, doing the cooking, making the purchases and also following the instructions which Pw. 2 and other members of the family used to give. His conduct in reporting about Soman's alleged disappearance some time after Pws, 10, 15 and 16 had seen him leaving the place with a chopper in his hand and Soman lying dead on the road side, is itself clear proof that he is a man of more than average intelligence.

His conduct in concealing the blood stained shirt and the blood-stained chopper is equally eloquent in that regard so also the false explanation as to the cause of presence of blood-stains on the cloth he was wearing. We have read the entire evidence on record with this aspect particularly in mind and feel that the learned Judge was right in his view that the accused was intelligent enough to truly understand the criminal nature of the act he committed. It may also be added that the learned Sessions Judge has done everything possible to give the accused a fair trial.

11. The next question for consideration is what orders we should pass in exercise of the power vested in us under Section 341, Criminal P. C. Doubts were felt at one time whether it was proper Or even open to the High Court to pass a sentence upon a deaf-mute convicted for the commission of an offence. Apart from the propriety of the action it was doubted whether the words ' .....

and the High Court shalll pass thereon such order as it thinks fit' in the concluding portion of section 341, Criminal P. C., contemplated any punishment being inflicted upon a person against whom a conviction was entered in conformity with the provisions of that section.

Decided cases have, however, now made it clear beyond doubt that a sane deaf-mute convicted for commission of an offehce is not exempt from punishment -- see Emperor v. Nga San Myin, 12 Cri LJ 386, (Upp Bur), Queen Empress v. Somir Bowra, ILR 27 Cal 368; ILR 40 Bom 598: (AIR 1917 Bom 288), (already cited in another connection), Emperor v. Khashaba Tatyai Lawand, AIR. 1923 Bom 194 (1); In re Boya Polamma, AIR 1941 Mad 225; Emperor v. Ulfat Singh; AIR 1947 All 301 and In re Oomai, (1955) 1 Mad LJ 113. These clearly enunciate the rule that there is no provision in the Indian Penal Code under which a person found to be guilty of an offence could be exempted from punishment merely because he is deaf and dumb. The reason of the rule is very well brought out in the judgment of the Upper Burma Judicial Commissioner's Court in 12 Cri LJ 386 (Upp Bur). The relevant portion of the head note which correctly sets out the purport of the decision may usefully be quoted here :

'In a case reported to the High Court, under Section 341, Criminal P. C., the High Court has full discretion to do whatever the circumstances of the case require. The section gives the High Court power to pass sentence on the Magistrate's finding. Queen v. Bowka Hari, 22 Suth WR Cr. 35, Queen v. Bowka, 22 Suth WR Cr. 72; ILR 27 Cal 368 : 4 Cal WN 421, relied upon.

Want of speech and hearing do not imply want of capacity either in the understanding or memory but only a difficulty in the means of communicating knowledge.

There may be mental deficiency at the same time but it is not necessarily involved in the deaf-mute condition.

The law of India does not provide for a sane deaf-mute who has never been instructed being, exempted from punishment.

A sane deaf-mute cannot generally live to a mature age without learning something of his duty towards his neighbour in person and property.

A deaf-mute, to whom Ss. 82 and 83 of the Penal Code do not apply, must, in order to escape criminal liability, come within Section 84; in other words, if his mind is sound, his inability to hear and speak will not excuse him.'

In the Calcutta case referred to in the above extract, which is one of the cases referred to by us, Princep and Stanley, JJ., observed as follows during the course of their judgment:

'The High Court can in a case triable by a Magistrate pass sentence on what is termed a conviction, though it cannot strictly speaking be so termed, seeing that the accused cannot in such a case make a proper defence. The proceedings are anomalous, and in all respects do not represent a complete trial. If they did, a special report for the orders of the High Court would be unnecessary.'

In ILR 40 Bom 598 : (AIR 1917 Bom 288), Batchelor and Shah, JJ., stated :

'Section 341 provides that in such a case as this the High Court should pass such orders as it thinks fit. The law in England appears to the that though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment; see Russel on Crimes, Vol. 1, p. 62; Archbold's Criminal Practice, p. 11 and R. v. Steel, (1787) 1 Leach 451; 22 Suth WR Cr 35; 22 Suth WR Cr 72 and The Queen-Empress v. Reubin Samuel, (1894) Rat Un Cr C 696, are authorities to show that the same is the law and practice in India. In this case we are satisfied from the learned Magistrate's judgment that he was right in finding that the accused understood the nature of the act which he was committing when he committed this theft.'

While confirming the lower court's conviction of the accused for the offence of murder we have to pass sentence against him which would be according to law. Section 302, Penal Code enacts that whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine. Having been

found guilty of murder the lightest sentence we can pass against the accused is one of imprisonment for life and we accordingly sentence him to undergo rigorous imprisonment for life. In one of the Madras cases cited above, namely, in AIR 1941 Mad 225, a deaf-mute found guilty of murder was sentenced to transportation for life by Lakshmana Rao and Horwill, JJ, If we were finding the accused guilty of anoffence for which no minimum punishment wasprescribed, we would certainly have been inclinedto inflict a light punishment, but as the law standswe cannot do that. It is however up to the StateGovernment to consider whether the circumstanceof the case does not warrant a substantial portion ofthe sentence being remitted by exercise of thepowers vested in them under section 401(1) Criminal Procedure Code. A copy of this judgmentwill be forwarded to the Chief Secretary to Government for such action as the Government deems fitand proper. Order accordingly.