Chellappan Vs. State

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Court : Kerala

Decided On : Mar-13-1959

Reported in : AIR1959Ker361; 1959CriLJ1327

Judge : S. Velu Pillai, J.

Acts : Kerala High Court Act, 1959 - Sections 3; Code of Civil Procedure (CPC), 1908

Appeal No. : Criminal Appeal No. 319 of 1958

Appellant : Chellappan

Respondent : State

Advocate for Def. : V. Narayana Menon, Public Prosecutor

Advocate for Pet/Ap. : T.R. Achutha Warrier and; V. Nagappa Nair, Advs.

Disposition : Appeal allowed

Judgement :

S. Velu Pillai, J.

1. This appeal was posted before me, sitting as a single judge, pursuant to the provisions of the Kerala High Court Act, 1958, Act V of 1959. A preliminary objection to the competency of a single Judge to hear the appeal was raised on

behalf of the appellant, who is the accused in the case, on the ground, that he has a vested right to have the appeal heard, by a bench of two Judges, under the earlier High Court Act of 1125. Reliance was placed by his learned counsel on the decision of the Supreme Court in Garikapati Vee-raya v. N. Subbiah Choudhry, (S) AIR 1957 SC 540, particularly, the observations of the learned Chief Justice in paragraph 48 of his judgment, and also, on the decision of the Punjab High Court in Gordhan Das Baldev v. Governor General in Council, AIR 1952 Punj. 103.

The question for decision in the case before the Supreme Court was, whether by reason of a subsequent change in the law, a right of appeal to the Federal Court which was previously in existence, was extinguished; this was answered in the negative. The dictum of the Supreme Court is of little relevance in the present case, for the right of the appellant to appeal to the High Court, conferred by Section 410, Criminal Procedure Code, has not been taken away by the High Court Act of 1959, which has been enacted, as the preamble says, only 'to make provisions regulating the business and the exercise of the powers of the High Court'.

The view taken by the Travancore-Cochin High Court in Narayana Panicker Sankaranarayana Panicker v. Sankaranarayana Panicker 1952 Ker LT 839 : (AIR 1953 Trav-Co. 53), with respect to the earlier High Court Act, that no litigant has a vested right that his appeal should be heard by a particular number of Judges and that the provisions of the Act prescribing the powers of Single Judges and Division Courts are only matters affecting procedure, must hold even under the High Court Act of 1959.

2. As noticed in Fateh Chand v. Muhammad Bakush I.L.R. 16 All. 259, there is a distinction between 'a right of action' and a 'right of action to b' conducted in a particular way'. The former is a vested right, while the latter is merely a matter of procedure. It is unnecessary to discuss the cases bearing on this point, many of which, have been considered by Koshi, C. J. in the Travancore-Cochin case cited earlier. If, as I think, the view held in that case is sound, it must follow, that the provision in the High Court Act of 1959, empowering a Single Judge to hear an appeal of this category, must have retrospective operation so as to apply to

pending appeals.

3. Some reliance was placed on the following observations of the Supreme Court in Garikapati's case (S) AIR 1957 SC 540, 'we think, that the suit, out of which this application arises, having been instituted before the date of the Constitution, the parties thereto had, from the date of the institution of the suit, a vested right of appeal upon the terms and conditions then in force', and it was urged, that the right of hearing before a bench of Judges, was 'a term or condition' within the meaning of the above observations, and cannot now be denied to the appellant.

It is clear to my mind, that the term or condition referred to, must at least qualify the right of appeal, if it is not so intimately connected with it as to form part of that right. The judgment of the court, in which these observations are found, itself furnishes instances of such terms or conditions, which amply illustrate the meaning of these words, in the context in which they were employed.

4. The case decided by the Punjab High Court, cited above, has no application to a criminal appeal; the rationale of that decision was, that the effect of an amendment in the law, by which single Judge became competent to hear civil appeals which used to be heard by a divisional court, was to take away the right of a further appeal to the Supreme Court, under Article 133(3) of the Constitution. The Travancore-Cochin High Court has dissented from the view so taken, in Narayana Pa-nicker Sankaranarayana Panicker's case 1952 Ker LT 339 : (AIR 1953 Trav-Co. 53). I therefore hold, that a Single Judge is competent to hear this appeal.

5. The appellant was convicted by the learned Sessions Judge of Trivandeum, for an offence under Section 304 Part II, I. P. C. and was sentenced to undergo rigorous imprisonment for 18 months. He married Nagamma, the deceased, about 57 days before her death, which took place on the night of the 22nd January 1958. He was living with his paternal uncle, P.W. 4, and other members of the latter's family, consisting of his wife, P.W. 5, and his sons P.Ws. 6 and 7. The appellant began to suspect, that his wife was in criminal intimacy with P. W. 0, about 18 years of age; he had often warned her against it, but to no purpose. On the night of the 22nd January, when the appellant returned home at about 9.30, he noticed

his wife and P. W. 6, coming out of lane attached to their residence.

The case against the appellant is, that he then caught hold of his wife, took her into her room, pushed her against a wall, then brought her out into the courtyard, assaulted her by hitting her on the left side of the chest and the abdomen and then pulled her by her hands to the road side, when his sister intervened, and the deceased ran towards P. W. 4. After a time, 'the appellant removed some of his vessels and also a box, as if he had nothing more to do with her, and then left the place. Later, in the night, he went to the house of his father-in-law, P. W. 1 at Vanchiyoor, and insisted on a divorce being arranged then and there.

On the next morning, news reached the ears of P. W. 1, that his daughter had died. P. W. 1 then gave the first information Ext. P. I, at 10.35 A. M., at the Puthanchanthai Police Station, stating that he suspected foul play at the hands of the appellant. The police registered a case, and held an inquest over the dead body on the same day when P. W. 7 and others put up a theory, that the deceased had committed suicide by taking kerosene oil and by hanging herself afterwards. It was strange, that no mark of violence was noticed by the Sub-Inspector, P. W. 12 at the inquest. The post-mortem examination took place only on the succeeding day when it was revealed, that there were four contusions on the body, on the left side of the abdomen and of the chest and on the face and on the left shoulder.

Corresponding to the contusion on the left side of the chest, there was a laceration on the lower lobe of the left lung, while the spleen was contused and swollen. In the opinion of the surgeon, the injury of the lung was fatal, hut not the injury to the spleen, which was said to he a serious one. The cause of death was syncope from shock and haemorrhage, due to the injuries to the lung and the spleen. On the above evidence, it may be concluded, that Nagamma died on the 22nd night, as a result of an injury to the lung.

6. (His Lordship then discussed the evidenceand proceeded) The learned Public Prosecutor urged,that the circumstantial evidence by itself is conclusive to establish the guilt of the appellant. Thecircumstances pointed out by him were the motivefor an attack on his wife, and the injury detectedon post-mortem examination. I am of the view,that these circumstances alone are not sufficient

tobring home the guilt of the appellant. The resultis, that the conviction of the appellant entered bythe learned Sessions Judge is hereby quashed andthe sentence is set aside. The appellant is acquitted, and set at liberty forthwith, if not wanted on anyother charge. The directions regarding the disposalof the material objects will stand. The appeal isallowed.