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Ramesan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-06-1981

Reported in : 1981CriLJ451

Judge : P. Janaki Amma and; S.K. Kader, JJ.

Appellant : Ramesan

Respondent : State of Kerala

Judgement :

P. Janaki Amma, J.

1. The appellant is the accused in S. C. No. 2 of 1980, disposed of by the Additional Sessions Judge, Parur. The accused was charge sheeted for an offence under Section 302 of the Indian Penal Code for causing the death of Narayanan Kartha, his maternal grand-father.

2. The case of the prosecution is as follows :- The appellant was an accused in S.T. No. 931 of 1979 of the Judicial Magistrate of the First Class, Perumbavoor, wherein he was charged for an offence under Section 51(a) of the Kerala Police Act. He was convicted in that case. He entertained enmity towards the deceased for not getting him released on bail during the pendency of that case. The deceased also stood in the Way of the sale by the appellant of his share of family properties, on which count also the appellant bore some grudge against the

deceased. On 11-10-1979 at about 10.00 a.m. the appellant went to the house where the deceased was staying and demanded some money. The deceased did not accede to his request. There was an exchange of words and the appellant threatened that he would kill the deceased. At about 2.30 p.m. on the same day the appellant again went to the deceased's house and inflicted injuries on the deceased as a result of which he died on the spot. The appellant was duly committed for trial in the Sessions Court. A charge was framed against him on 18-1-1980. When it was read over and explained to him the appellant pleaded guilty. The learned Additional Sessions Judge, it appears, apprised him of the consequence of the said plea and also told him that he was not bound to plead guilty. The appellant however repeated the plea. The learned Additional Sessions Judge felt that it was only proper to give him time for deliberation and remanded him to custody with a direction to produce him on 23-1-1980. A counsel was also appointed on the same day to defend him. The counsel had, it is stated, discussion with the appellant in the Sub-Jail. On 23-1-1980 the accused was produced before Court. The charge was again read over and explained to him. The appellant again pleaded guilty. The learned Sessions Judge again explained to him the consequences of his plea. The appellant however repeated the plea of guilty. The court felt that it was made voluntarily and accepted the plea and convicted him. The accused was thereafter heard on the question of sentence. The accused had nothing to submit. According to him, he had committed the offence and was prepared to undergo the punishment awarded by the Court. The learned Addl. Sessions Judge felt that in the circumstances of the case the lesser sentence for the offence of murder would be sufficient to meet the ends of justice and sentenced the appellant for imprisonment for life.

3. The appellant challenges the above conviction and sentence. It is stated in the Memorandum of Appeal that the appellant was not in a sound state of mind at the time of the commission of the offence and that the Sessions Court should have adverted to that aspect and should have caused him to be medically examined.

4. There was absolutely no material to suggest that the case was one wherein the Court could have entertained any reasonable doubt regarding the mental condition of the appellant. The conviction is therefore not liable to be set aside on the

ground that the appellant was not mentally sound at the time of making the plea.

5. The further point to be considered is whether the Court should not have accepted the plea of guilty put forward by the accused. The concerned provision is contained in Section 229 of the Code of Criminal Procedure 1973(for short the Code), which reads:

If the accused pleads guilty, the Judge shall record the plea and may in his discretion convict him thereon.' The section corresponds to Section 271(2) of the Code of Criminal Procedure, 1898, (for short the old Code), though there is a slight variation in the language. Section 271(2) of the old Code reads:

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

No decision on the scope of Section 229 of the Code has been brought to our notice. But the question had come up for consideration on many an occasion under the old Code and also under the Code of 1882 (Act X of 1882) where the Court was called upon to accept the plea of guilty in a case where the offence charged was one of murder where the Court was likely to pass a sentence of extreme penalty under law. The view taken by almost all the High Courts was that in view of the fact that the word used in Section 271(2) was 'may' it was always within the discretion of the Court to decide whether the plea should be accepted and acted upon. Netai Luskar v. Queen Empress (1885) ILR 11 Cal 410 and Queen Empress v. Bhadu (1896) ILR 19 All 120, are cases which arose under the Code of 1882. The conviction based on the plea was set aside in those cases and a full trial was ordered.

6. One of the earliest cases on the point under the Code of 1898 is the decision of the Bombay High Court reported in Emperor v. Chinia Bhika Koli (1906) 3 Cri LJ 337. In that case the Sessions Judge accepted the prisoner's plea of guilty. The trial Court held that the accused did not put forward any circumstance which might reduce the sentence to one of culpable homicide, and therefore, awarded the extreme penalty of death. Jenkins C.J., who pronounced the judgment on behalf of the Bench observed-

It is not in accordance with the usual practice to accept a plea of guilty in a case Where the natural sequence would be a sentence of death.

The learned Judge proceeded to say-

A man may plead that he hit some one who thereby died, and that he did it for the purpose of taking away the ornaments of the person injured without necessarily admitting that he committed murder, for murder under the Penal Code requires a certain intention or a certain knowledge.

Holding that it was not safe to accept the conclusion of the Sessions Judge the High Court set aside the conclusion and sent the case back to the Sessions Judge for trial according to law.

7. In Queen-Empress v. Chinna Pavuchi (1900) ILR 23 Mad 151, the Madras High Court observed:

The Code (Section 271) only says that 'the plea shall be recorded, and he may be convicted thereon'. As a matter of practice the Sessions trials-especially in murder cases -many Judges, as we think very properly, prefer not to act on the plea of guilty, but proceed to take the evidence just as if the plea had been one of not guilty, and decide the case upon the whole evidence, including the accused's plea.

8. In Dalli v. Emperor AIR 1922 All 233 (1) : 1922-23 Cri LJ 283 the Allahabad High Court held on the question whether a plea of guilty should be acted upon in a case of murder:

In a case of murder it has long been the practice not to accept the plea of guilty. After all murder is a mixed question of fact and law and unless the Court is perfectly satisfied that the accused knew exactly what was necessarily implied by his plea of guilty, the case should be tried.

The above decision was followed in Mt. Sukhia v. Emperor AIR 1922 All 266 : 1923-24 Cri LJ 609 and the rule of practice was reaffirmed in the following words:

That Rule is that when an accused is on his trial on a capital charge, it is not expedient that the Court should convict him even upon a plea of guilty entered

before the trial Court itself. As a matter of practice the Court should, in its discretion, put such a plea on one side and proceed to record and consider the evidence, in order to satisfy itself, not merely of the guilt of the accused, but of the precise nature of the offence committed and the appropriate punishment for the same.

See also Lahori v. Emperor AIR 1925 All 647 : 1925-26 Cri LJ 1316. The High Court of Calcutta has also been in favour of a similar practice as is clear from the following observation in Hasaruddin Mohommad v. Emperor AIR 1928 Cal 775 : 1929-30 Cri LJ 508:

We desire to observe that we cannot too strongly impress upon the learned Sessions Judge that in cases under Section 302, I.P.C. it is undesirable to accept a plea of guilty and to bring the trial to an end thereon. The trial of an accused person does not necessarily end if he pleads guilty but evidence may and should be taken in cases of murder as if the plea had been one of not guilty and the case decided upon the whole of the evidence including the accused's plea.

9. The Chief Court of Cochin had occasion to consider the question on more than one occasion. In Sirkar v. Pathu 9 Cochin LR 397 (FB), Narayana Iyer, C.J., referred to the following passage in Queen-Empress v. Bhadu (1896) ILR 19 All 120:

In this country it is dangerous to assume that a prisoner of this class understands what are the ingredients of the offence under Section 302 of the Indian Penal Code, and what are the matters which might reduce the act committed to an offence under Section 304. Even in England it is used to be the practice of some Judges, and probably is still, although they were not bound to do so, to advise persons pleading guilty to a capita] offence to plead not guilty and stand their trial.

The learned Judge held-

The accused is charged with a capital offence, and it need hardly be pointed out that the usual practice in such cases is not to accept the plea of guilty, but to proceed to record evidence and base the order of conviction or acquittal according

to the reliability or unreliability of that evidence.

The above decision has been followed in Sirkar v. Raman Nayar 27 Cochin LR 557 and Sirkar v. Kurumba, 28 Cochin LR 132.

10. Similar views have been expressed in Achar Sanghar v. Emperor AIR 1934 Sind 204 : 1935-36 Cri LJ 324, Abdul Kader v. Emperor AIR 1947 Bom 345 : 1947-48 Cri LJ 329, Laldin v. The State and In re Gavisiddappa AIR 1968 Mys 145 : 1968 Cri LJ 762. See also the dicta in State v. Moideen Batcha Allapicha 1953 Ker LT 547 : 1953 Cri LJ 1814, State of Mysore v. Bantra Kunjanna AIR 1960 Mys 177 : 1960 Cri LJ 965, In re Nallayee 1961 (2) Cri LJ 581 (Mad) and State v. Gopinatha Pillai 1978 Ker LT 779 : 1980 Cri LJ NOC 39.

11. This does not however mean that a conviction entered on a plea of guilty in a case falling under Section 302 of the Indian Penal Code should always be set aside. In fact there are cases where the Court has upheld conviction based on the plea of guilty even in cases of murder, and this has been done after satisfying that the accused understood the nature and effect of the charge to which he pleaded guilty. See Ngavawa v. Emperor AIR 1935 Rang 49 : 1935-36 Cri LJ 336.

12. Reference may also be made to the decision in Rex v. Golathan (1915) 84 LJ KB 758. The appellant in the case was indicted with entering a dwelling house by night with intent to steal. At the commencement of the trial the appellant admitted that he entered the house, but not that he had done so with intent to steal. A plea of 'guilty' was entered and after proof of previous convictions, the appellant was sentenced to seven years' penal servitude. From the records it came out that the appellant intended to admit that he entered the premises but not that he did so with intent to steal. The Court held that the plea of the appellant was not a plea of 'guilty' and held that if there is any ambiguity in a plea, it must be treated as a plea of 'not guilty' and the trial must proceed in the ordinary way.

13. The rule of practice adopted by the various High Courts in not acting upon a plea of guilty in cases of serious offences of murder is a rule of caution and prudence. An offence of murder involves not only the physical act of violence but also the mental element of intention or knowledge. A lay accused, when he pleads

guilty is likely to be more concerned with the physical act and may not advert to the various ingredients constituting the offence. As mentioned in Dalli v. Emperor AIR 1922 All 233(1) : 1922-23 Cri LJ 283, whether act constitutes murder is a mixed question of law and fact. The Court while holding an accused guilty of murder should also enter a finding that he did the act with the requisite intention or knowledge. For such a finding to be entered and to decide whether the offence is murder or a lesser offence, the Court should have before it the details of the occurrence, the circumstances under which the act was done and the motive if any and for this purpose it is desirable that the entire evidence is placed before the Court

14. It may be recalled in this connection, that Section 354(3) of the Code directs that where the conviction is for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years, the judgment should state the reasons for the sentence awarded and in the case of sentence of death, the special reasons for such sentence. In the absence of sufficient materials before Court by way of evidence, there has not been proper compliance of the provision in the instant case.

15. It would appear from the judgment that the trial Judge was hesitant to decide the case on the plea of guilty and did so only because the accused persisted in repeating the plea. The learned Judge did not advert to the fact, while under the old Code discretion in the matter of examination of witnesses had to be inferred from the use of the word 'may' there is specific conferment of such discretion on the Court in Section 229 of the present Code. The offence involved being a grave crime, the learned Judge should have availed of the discretion so conferred and proceeded to dispose of the case after recording evidence.

For the reasons mentioned the conviction and sentence passed by the trial Court are set aside. The case is sent back to that Court for fresh disposal after taking evidence. The appeal will stand allowed as above.

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