

Balan Nair Vs. State

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Court : Kerala

Decided On : Apr-03-1987

Reported in : 1988CriLJ721

Judge : M. Fathima Beevi and; K.G. Balakrishnan, JJ.

Appellant : Balan Nair

Respondent : State

Judgement :

K.G. Balakrishnan, J.

1. The appellant Balan Nair was sent up for trial for the offence punishable under Section 302 I.P.C. for having caused the death of his wife Chinnammu. The prosecution case is that he strangled her with a coir rope and tied her body to the beam of the house to make it appear that the deceased hanged herself. The Sessions Court declined to accept the appellant's plea of innocence and found him guilty of murder and sentenced him to undergo imprisonment for life. The conviction and sentence are challenged in this appeal.

2. The appellant is a tea shop owner. The appellant and his deceased wife had two children and for about two years they had been residing together and some time prior to the incident the deceased had been residing in the house of her parents and she was in the advanced stage of pregnancy. The appellant had

started constructing a new house. He could not complete the construction of the house for want of adequate funds. The house was not plastered and wooden planks had to be fitted for the doors and windows. Because of the financial difficulties the appellant had been requesting his wife to get her share of property from her parents. On 19-1-1983 the appellant came to the house of his wife and he repeated his demand for the share of property. PWs. 3 and 4, the parents of deceased Chinnammu and PW 6, a next door neighbour, pacified the appellant and promised to settle the matter. In the morning of 21-1-1983 at about 7 a.m. deceased Chinnammu went to the newly constructed house. On the previous day the appellant, deceased and their children had been to this house for watering some coconut saplings. An ear stud worn by one of the children was alleged to have been lost on that day and the deceased went to the house obviously to search for the lost ear stud. The further case of the prosecution is that the appellant followed his wife and he strangled the deceased with a coir rope. He tied one end of the rope on the neck of the deceased and the other end was tied to the beam of the house. PW 1 who was residing very close to the house of the appellant saw the latter at about 9.30 a.m. in a very perplexed condition. He asked the appellant as to what was the cause of this perplexity and the latter confessed his guilt to this witness.

3. P.W. 1 later went to the police station and lodged Ext. P1 information. PW 13 recorded the first information statement and registered a case against the appellant. PW 14 the Sub-Inspector of Police, conducted the investigation. He proceeded to the scene of occurrence and prepared Ext. P2 inquest. MOs. 1 to 9 were also recovered from the place of incident. The dead body was sent for post mortem examination and PW 8 conducted autopsy and Ext. P3 is the certificate. PW 14 came to know that the appellant had surrendered before the Ponnani police station and he was later arrested and brought to Changaramkulam police station.

4. On the side of the prosecution 15 witnesses were examined. There were no eye witnesses. PW 1 saw the appellant immediately after the incident. PW 5 Devaki had seen the appellant and deceased some time prior to the incident. PWs 3 and 4 are the parents of deceased Chinnammu, PW 7 was examined to prove the

motive of the Crime. The Sessions Court after extensively considering the evidence on record came to the conclusion that the deceased was strangled by the appellant.

5. The appellant when questioned under Section 313 Cr.P.C. deposed that the deceased might have committed suicide and he had no enmity towards the deceased and they were leading a happy married life. He has also denied having given any extra judicial confession to PW 1.

6. The deceased Chinnammu was first found dead by PW 1. PW 8 conducted the post mortem examination and in the, post mortem certificate the details of the injuries have been mentioned. There was a depressed ligature mark completely encircling the neck. There was also a knot mark on the right side of the neck. There was extravasation of blood on the neck. The neck cartilages were also found fractured in vertical direction. Saliva and froth were coming from the left side of the mouth. PW 8 was of the opinion that the death was due to asphyxia by strangulation. The learned Counsel for the appellant contended before us that all these marks on the persons of deceased Chinnammu were indicative of the case of suicide that grip and not strangulation. The learned Counsel pointed out that in the case of strangulation there would not be any salivation. PW 8 deposed that because of the sudden respiratory arrest there will be stimulation of the glandular nerve supply and that would produce an increased salivation. Doctor Modi in his book 'Modi's Textbook of Medical Jurisprudence and Toxicology' 20th Edn. at page 146 has stated:

Saliva is often found running out of an angle of the mouth down on the chin and chest. This is a sure sign of hanging having taken place during life, as the secretion of saliva being a vital function cannot occur after death.

Based on the observation of Dr. Modi it could only be assumed that if pressure is exerted on the neck while the victim was alive there could be possibility of salivation. If in a case where death was caused by some other external force and the body was hung to make it appear that it was a hanging, there would not have been any possibility of salivation. Therefore the presence of saliva coming out of the mouth of the victim cannot be a sure indication of suicidal hanging. Even in the

case of strangulation there is possibility of saliva coming and the evidence of PW 8 in this regard is consistent with the prosecution Case. Moreover the depressed ligature mark was seen in the middle of the neck completely encircling the neck and the fact that knot mark was found on the right side of the neck also are indicative of strangulation.

7. The description of the dead body as found in the house of the appellant has been given in detail in the inquest report. PW 14 gave evidence in support of this description. The dead body of the deceased was in a squatting position. One hand of the corpse was touching the surface. The rope was tied along the neck of the deceased. After tying the rope around the neck it was seen tied on the beam on the southern room and then it is tied around the beam on the northern room and the other end of the rope is seen tucked and kept by the side of the ceiling. The description of the scene by PW 14 would clearly indicate that the deceased herself would not have done all these acts. If it was a case of suicidal hanging, the deceased would not have been in a position to tie the coir rope around the two beams. It is all the more important that the deceased was in an advanced stage of pregnancy. There was no table, cot or other articles found in the house to enable her to climb the wall so as to tie the coir rope around the beam. All these are circumstances to show that the appellant first strangled the deceased and tied the dead body with a coir rope and made all attempts to make it appear that it was a case of suicidal hanging. The Sessions Court had rightly held that Chinnammu met with her death by strangulation.

8. The next item of evidence relied on by the prosecution is the evidence of PWs. 1 and 5. PW 1 saw the appellant at about 9.30 a.m. coming out of his house and to the query of PW 1 the appellant replied that he had done away with his wife. PW 1 gave the first information statement at about 3.45 p.m. on the same day and Ext. P1 statement is seen to have been received by the J.F.C.M. Court Ponnani on the next day itself. PW 1 had stated that on his way he met PW 6, the uncle of the deceased and he instructed Him to inform the relatives of the deceased. While giving evidence in Court he has stated that himself and PW 6 went to the house of the appellant and saw the dead body of deceased Chinnammu. In Ext. P1 he did not mention anything about the presence of PW 6, This fact alone is not sufficient

to discredit the evidence of PW 1. PW 1 appears to be an independent witness having no special enmity towards the appellant. PW 5 is the mother of PW1 and is a woman aged 65. She deposed that in the morning she met the deceased and she had some exchange of pleasantries with the deceased. While so the appellant came there and both of them went inside the house. By about noon PW 5 came to know of the death of deceased. The learned Counsel for the appellant pointed out that if PW 1 was aware of the death of the deceased in the morning itself, naturally he would have informed PW 5. PW 5 is an old lady and she alone was present in the house when PW 1 left. Probably PW 1 never wanted to inform his old mother and to create a panic in her mind. The evidence of PW 5 is a strong incriminating circumstance against the appellant. The deceased was last seen alive in the company of the appellant by PW 5. The dead body of deceased Chinnammu was later found tied to a rope by one end and the other end of the rope was tied to the beam of the house. The evidence of PW 5 has a ring of truth and we are impressed by that evidence.

9. The learned Counsel for the appellant further contended that there was no motive for the appellant to commit this crime and the appellant and the deceased were having a happy married life and even if the appellant had any financial difficulty there was no necessity to murder his wife. PWs. 3 and 4, the parents of the deceased, deposed that the appellant has all along been claiming share of property of his wife and there was occasional bickering between the appellant on the one hand and the wife and her parents on the other. PW7, a neighbour, also deposed that on 19-1-1983 the appellant came to the house of the deceased and there was a wordy altercation between the appellant and others and it was the parents and PW 7 and others who pacified the appellant. The fact that the appellant picked up a quarrel shows that some thing was brewing up in his mind and he was bent upon causing trouble to his wife. The appellant might have been in stringent financial difficulty and this being a case of husband causing the death of his wife, it is difficult to prove extreme niceties of motive. However, the evidence of PWs. 4, 5 and 7 would clearly show that the appellant was in dire need of money. The prosecution has succeeded in proving the motive for his crime.

10. The learned Sessions Judge has extensively considered the evidence on record and found that the appellant was guilty of causing the death of his wife. We were taken through the entire evidence on record and we are satisfied that the appellant has been rightly convicted by the Sessions Court. We see no reason to interfere with the conviction and sentence entered against the appellant by the Sessions Court. We confirm the same and dismiss the criminal appeal.

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