

In Re: Mathappa Goundan

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Court : Chennai

Decided On : Oct-09-1953

Reported in : AIR1954Mad538

Judge : Govinda Menon and ;Basheer Ahmed Sayeed, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) -Sections 300 and 302

Appeal No. : Criminal Appeal No. 192 of 1953

Appellant : In Re: Mathappa Goundan

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Srinivasamurthy, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Govinda Menon, J.

1. The appellant has been found guilty of an offence under Section 302 I. P. C., for having caused the death of his wife, Masakkal, by cutting her throat with an aruval at about 5 p. m. on the 20th September 1952 at Mokkaithottam Jadayampalayam village in Coimbatore district.

2. The facts of the case He in a very narrow compass and do not admit of any serious dispute except in one or two details. When questioned under Section 342 CrI. P. C. by the learned Sessions Judge, the appellant admitted that he cut his wife and thereby caused her death; but he pleaded provocation for the act. According to the evidence of P. W. 4, who was living at a distance of about half a mile from, the shed of the appellant, about twelve days prior to the occurrence, the appellant saw the witness and complained to him that his wife was in criminal intimacy with one Naga Naicken, who was also living nearby and that whenever the appellant took his wife to task, Naga Naicken would attempt to beat him. The witness pacified him but the appellant was in a fit of violent temper.

3. With regard to the actual incident we have the evidence of P. Ws. 1, 2 and 3 of whom P. W. 1 is the son of the appellant. He deposed that at about 5 p. m. on the day in question while the appellant was cutting cumbu stalks with an aruval, which is marked in the case as M. O. 1. in front of his house and while he was bundling the stalks, the deceased passed that way in the direction of Naga Naicken's shed. The appellant asked her if she was on her way to Naga Naicken's shed and she answered in a very defiant tone that that was her destination. Thereupon the appellant threatened the deceased with dire consequences. Despite that, the deceased proceeded in the direction in which she was going when the appellant caught her by the tuft of her hair, dragged her into the cumbu field and cut her several times with M, O. 1. The deceased fell down and expired very soon. This is spoken to by P. W. 2 also, a boy of 10 years of age and a nephew of the appellant. He corroborates in detail what P. W. 1 has stated. In cross-examination this witness further stated that when the appellant threatened the deceased with dire consequences, she threatened to kick him and lifted her leg with sandals on for that purpose. It was only afterwards that the appellant cut the deceased. The fact that the deceased was on terms of criminal intimacy with Naga Naicken and consequently there were quarrels between the husband and the wife has been spoken to by P. W. 1 as well.

It is not necessary to recapitulate the further incident because, immediately after he stabbed, the appellant appeared at the police station at Mettupalayam, at about 6 p. m. and surrendered himself with M. O. 1. On his making a statement he was

arrested and remanded to custody. The next day he was produced before the Sub Magistrate, P. W. 5, who, after conforming to the necessary formalities and giving the requisite warnings, recorded a confession from him which is marked as Ex. P. 4 in the case. This confessional statement was recorded on 3-10-1952 and it is to the effect that while the accused was cutting cumbu stalks in his garden, his wife told him that she was going to Naga Naicken's garden and on his obstructing her, saying that she should not go, she stubbornly said that she would go. As he had a suspicion that she was on terms of criminal intimacy with Naga Naicken, he tried to prevent her from going; and on her refusal he cut her with an aruval and she died. From these facts there can be no doubt that it was the appellant that caused the death of his wife and the question for consideration is whether the offence would come within exception 1 to Section 300 I. P. C.

4. It is contended by Mr. K. Srinivasamurthi for the appellant that the evidence shows that the deceased stubbornly, and without paying any heed to the appellant's persuasions, proceeded to the house of Naga Naicken, who was suspected to be her paramour, even though the appellant tried to prevent her from doing so. In addition, according to the evidence of P. W. 2, she threatened to kick him and lifted her leg with sandals on for that purpose. We are not satisfied that P. W. 2, is really speaking the truth when he says that the deceased had sandals on her feet because he did not mention the fact of the deceased lifting her leg and threatening to kick the appellant as well as her wearing sandals, to the committing magistrate. In the confessional statement also, there is no mention of the deceased threatening to kick. In such circumstances the acceptable evidence in the case is only this : It has been proved that the deceased was on terms of criminal intimacy with Naga Naicken and that on the day of the occurrence she was proceeding to Naga Naicken's house apparently with the object of continuing her criminal liaison. At that time the appellant tried to prevent her going to that house. But she retorted to a defiant way that she would go. Are these circumstances sufficient to bring the case within the exception, viz., of grave and sudden provocation?

5. Our attention has been drawn to a few cases by the learned counsel for the appellant, the first of which is reported in -- 'Sukhai v. Emperor' : AIR1925 All676 ,

in support Of his argument that in circumstances like the present, the offence that could be held to have been committed is only culpable homicide not amounting to murder. In that case what happened was that the deceased, who was the wife of the accused, was leading a grossly immoral life and on the accused upbraiding her with regard to her conduct, instead of being repentent, she replied that she should again do such acts. Thereupon the accused became enraged and struck her with a stick. On receiving the blow, she struggled with Him, got hold of his fingers and bit him. He then lost control of himself, took out a knife and stabbed her several times, as a result of which she died. The learned Judges, Sulaiman and Daniels JJ. held that under these conditions there was immediate provocation which was grave and sudden enough to bring the offence within exception 1 to Section 300 I. P. C.

We do not think that there can be any similarity between that decision and the facts of the present case for in that case the appellant was a long suffering husband who had put up with the immorality of his wife for a considerable length of time and had thought of migrating from his village unable to bear the ignominy that had been brought upon him as a result of his wife's misconduct. It is also seen from the facts that the accused there saw his wife having intercourse with a stranger outside the railway station where they had arrived on their way from their village. Those facts were sufficient to bring the case within the exception, for it is now settled that if a man were to see his wife in the actual act of committing adultery with another, i.e., if she is caught 'in flagrante delicto', and then commits the murder of either wife or her paramour, the offence would only be culpable homicide not amounting to murder. This decision does not help the appellant in any way.

6. The other two cases on which reliance was placed are -- 'Jan Mahomed v. Emperor', AIR 1929 Lah 861 (B) and -- 'Inayat v. Emperor', AIR 1933 Lah 869 (2) (C). In the former case there was a long and previous history of the wife's notoriously immoral conduct and the husband taking her to task. On the night in question she suddenly disappeared from the bedside of her husband and on returning was reprimanded for her act. The wife vulgarly abused him. The husband lost all self-control after all that, he had undergone and picking up a rough stick

lying closely struck the fatal blow to the erring wife. It was held by the learned Judges, that the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman resulting in her death. Having regard to the circumstances of that particular case they took a larger and more liberal view of Exception 1 to Section 300, I. P. G. and treated the case as one falling under the same.

7. In the latter case the facts show that on the night of the murder at about 3 a. m. the deceased, who was suspected to be immoral, went out of the house to meet a stranger at the back of the house for a clandestine purpose and when the accused asked the deceased, his sister, why she did not give up her evil ways, she refused to listen to him and gave an insolent reply. It was only then that the accused gave it blow With a hatchet which caused her death. The learned Judges held that the provocation received was in the circumstances almost as grave and sudden as it would have been, had the appellant seen the deceased in the act of sexual intercourse with a stranger and that it was further aggravated by the Insolent reply given by the deceased. It may be said that there is a faint resemblance between certain facts of the present case and the facts of the Lahore cases, But in the Lahore cases, the erring women had apparently committed an act of criminal sexual intercourse sometime prior to the infliction of the fatal injuries on them. We do not think that any of the above cases can be of any help in deciding the present case.

8. The learned public Prosecutor invited our attention to a judgment of this court in -- 'Imbichi Koya v. Emperor', AIR 1934 Mad 176 (D), where Bardswell and Lakshmana Rap JJ. held that the principle that if a wife suddenly confessed to her husband that she has committed adultery, it may be treated as equivalent to the discovery of the act itself and if the husband forthwith kills her, the offence is only one of culpable homicide not amounting to murder, cannot be extended to a case of murder by the husband of the paramour with whom His wife had confessed to have committed adultery. They distinguished the case of -- 'King v. Palmer', 1913 2 KB 59 (E) and held that if the wife tells her husband that she has committed adultery with a man, that would not be grave and sudden provocation for the

murder of the paramour. We are in entire agreement with the opinion expressed by the learned Judges in that case.

9. In -- 'the King v. Palmer', 1913 2 KB 29 (E), Lord Coleridge J. laid down the law that if a wife confesses to her husband that she had committed adultery with another man that would be sufficient provocation as to entitle the Jury, in their discretion, to find a verdict of manslaughter instead of murder and this view was upheld by the Court of Criminal Appeal.

10. In a recent case in -- 'Holmes v. Director Of Public Prosecutions', 1946 2 AH ER 124 (F), Viscount Simon, delivering the opinion of the House of Lords, has discussed the entire body of English case-law on the subject. It is held that a sudden confession of adultery by either spouse without more can never constitute provocation of a sort which might reduce murder to manslaughter. At page 127 we find the following observation :

'In my view, however, a sudden confession of adultery without more can never constitute provocation of a sort which might reduce murder to manslaughter. The dictum attributed to Blackburn J. and any cases which seem to accept or apply it can no longer be regarded as good law. The rule, whatever it is, must apply to either spouse alike, for we have left behind us the age when the wife's subjection to her husband was regarded by the law as the basis of the marital relation, when she was 'sub virga viri sui' and when the remedies of the Divorce Court did not exist. Parliament has now conferred on the aggrieved wife the same right to divorce her husband for unfaithfulness alone as he holds against her, and neither, on hearing an admission of adultery from the other, can use physical violence against the other which results in death and then urge that the provocation received reduces the crime to mere manslaughter.'

11. In view of the authoritative pronouncement by the House of Lords that even where a wife confesses her adultery, still such a confession would not amount to grave and sudden provocation, we feel that in the present case, where there is no such confession taut only a defiant answer to the effect by the wife that she would go to the house of Naga Naicken, there can be no justification for the accused to have brutally attacked his wife and brought about her death. The defiant tone of

the answer may, to some extent, amount to provocation. But it is not sufficiently grave; nor is it surprisingly sudden. The accused had been suspecting his wife for sometime and there was nothing that was suddenly brought to his knowledge. In the circumstances, following the decision in -- 'Holmes v. Director of Public Prosecutions', 1946 2 All ER 124 (P), we are of opinion that the lower court was right in holding that the offence is one of murder. The sentence is only the minimum.

12. The appeal is therefore dismissed

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