

**In Re: Ambalathil Assainar**

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**Court :** Chennai

**Decided On :** Apr-19-1955

**Reported in :** 1956CriLJ244

**Judge :** Mack and ;Krishnaswami Nayudu, JJ.

**Appellant :** In Re: Ambalathil Assainar

**Judgement :**

**Mack, J.**

1. The appellant, a Mopla, has been found guilty under Section 302, I.P.C. of the murder of his wife, Pathu, aged 25, on 20-8-1954 sometime between 9-30 p.m. and 11-45 p.m., and sentenced to transportation for life by the learned Sessions Judge of North Malabar.

2. The facts of this case are very tragic, the murder being founded really on desperate poverty, the evidence showing no unchastity or even any suspicion of it on the part of this wife. The body was found on the bench of an aided elementary school in Badagara at 7 a.m. the following morning by a school teacher, P.W. 1, with ghastly wounds on her neck which have been proved to have been caused by a small pen knife M. O. 9.

There was an incised wound 8' x 4' x 3' across and around portion of the neck cutting the muscles, veins, arteries, nerves and trachea. There was another wound

10' x 5' x 2-1/2' from the middle of the neck to the left side cutting all structures. There was also two comparatively minor incised wounds.

3. The accused was arrested on 26-8-1954 by the Sub-Inspector, P. W. 24, on the road near Badagara railway station. He had in his possession a pen knife M. O. 9 and a dhoti M. O. 10 on which, however, no human bloodstains were found. On 4-9-1954 he made a confession, Ex. P 6, before a Magistrate which we have no hesitation in holding to have been voluntarily made in which he confessed to killing his wife, under extraordinary circumstances pleading that he did so with her consent.

4. The evidence shows that the accused lived with his wife in the house of P.W. 4 on a rent of Rs. 3 a month which had gone into arrears. According to P.W. 4, the accused and his wife used to quarrel mainly because the former did not bring home anything for food. A few days before the murder, on Perunal day, there was a quarrel between the husband and wife. When he enquired, Pathu complained that the accused did not bring anything for food even on Perunal day and that after quarrelling the accused beat her. P.W. 4 then warned them that as they were in arrears for three months they must quit the house if they created disturbances of that kind.

The accused said that he would leave the house on the following Friday, that is, about a week later, and, in due course, on the day of the murder surrendered the key of the portion he was occupying at about 8-30 p.m. and went away with Pathu taking their younger child with them. In his confession Ex. P. 6 the accused said that after being given notice by P.W. 4 the elder child was sent to his father's house and after leaving P.W. 4's house he went with his wife and tried to persuade her to go to her mother's house.

As they were coming near the school it began to rain heavily, and, it would appear they had an argument as to what they should do. Pathu refused to go back to her mother's house and said that if the accused insisted it was better that she was killed.

In Ex. P. 6 the accused said that he asked her two or three times whether she did not wish to live and she told him that she did not want to do so. He then described how he took his pen knife and cut her with it on the neck. She struggled and when he realised that she would make a noise he thrust a cloth into her mouth. After life became extinct he took away his child and went to his father's house. He stuck to this confession in the committing court but resiled from it in the Sessions Court where he took refuge in complete ignorance as to how his wife came by her death.

5. There can be no doubt at all that it was the appellant that killed his wife after both left the house of P. W. 4. They were seen by a witness, P. W. 8, going together very near the school at about 9-30 P.M. Another witness, P. W. 9, saw the accused returning along with the child from the direction of the school at about 11-45 P.M.

The confession voluntarily made and adhered to in the committing court lays at rest any doubt as regards the guilt of the accused who undoubtedly cut his wife's throat. Pathu's body was described in the post mortem certificate as emaciated. A pawn broker, P. W. 21, deposed to the accused selling trifling ornaments usually worn by Muslim women of the value not exceeding Rs. 3 a few months before this tragedy. There can be no doubt that this family was living in a desperate state of poverty as a result of the accused being unable to find any source of livelihood.

6. The only point for consideration is the plea raised by Mr. Chakramakal that the offence is not murder under exception 5 to Section 300, I.P.C. and that Pathu suffered death in this case with her own consent. The learned Sessions Judge quite rightly rejected this plea on the ground that such consent must be given unconditionally and without any reservation.

7. Mr. Santhanam for the Public Prosecutor has drawn our attention to two decisions, *In re 'Kanaya Kosvan v. Emperor* AIR 1931 Mad 436 (A) and - *'Nainamuthu Kannappan In re'* AIR 1940 Mad 138 (B) in which this exception was applied and the offence reduced to Section 304, I.P.C. with however the sentence of transportation for life imposed. The former case was that of a man who killed his concubine whom he persuaded to go to her village saying that they had gone about 5 or 6 days in search of a house but found none. But, she lay down and

refused to get up.

He tried to persuade her to go on the ground that he was being scandalised also by his association with her. But she refused, took the knife out of his waist, put it into his hand and asked him to kill her. He accordingly cut her neck with the knife. The second case also concerned the killing of a concubine by her paramour. In the confession he made he stated that on the night in question, after some talk she declared that she would sever her connection with him and go away, and, in the alternative, she suggested that both of them might commit suicide. In the morning he killed her at the place where her body was found.

With great respect to the judgments in these two cases, it appears to us in the first case that the woman did not give her unqualified assent to her life being taken away as, in our view, exception 5 to Section 300, I.P.C. requires. In the second case the consent given by the woman was for her life to be taken simultaneously with the man's. She gave no consent to be killed by the man who then was to continue life on this earth. In the present case also, although the wife, taking the confession at its face value, flatly refused to go back to her mother and said that if her husband insisted on her doing so she would rather be killed, this, as it appears to us, is not the type of consent which is contemplated by Exception 5 to S- 300, I.P.C.

This exception, again with respect to the two decisions we have referred to, applies to cases where a person takes the life of another at his or her request and with unequivocal consent which does not involve the choice of alternatives to which the person taking the life more or less has driven the person. We think that the learned Sessions Judge, on the facts of this case has quite rightly declined to apply exception 5 to the facts. The case is undoubtedly a pathetic and a tragic one.

8. In the matter of sentence, we can only leave it to the Government to commute the sentence in this case, and we cannot lay down law out of charitable consideration which undoubtedly weighed with three of the assessors who rather extraordinarily held on the cogent evidence in this case that the accused was not guilty of any offence. The appeal is dismissed.

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