

(1993) 03 KL CK 0059

High Court Of Kerala**Case No:** Criminal Appeal No. 230 of 1989 and Criminal R.C. No. 7 of 1993

Bhadran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: March 8, 1993**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 232, 233, 233
- Penal Code, 1860 (IPC) - Section 302, 392, 449

Citation: (1993) CriLJ 1966 : (1993) 3 ILR (Ker) 586**Hon'ble Judges:** P.A. Mohammed, J; Chettur Sankaran Nair, J**Bench:** Division Bench**Advocate:** G. Janardhana Kurup, for the Appellant; M. Ratna Singh, State Prosecutor, for the Respondent

Judgement

Chettur Sankaran Nair, J.

This Appeal by the accused in S.C. 113/88 on the file of the Court of Session, Quilon Division is directed against the conviction and sentence imposed on him by that Court, for offences u/s 449, 302 and 392, IPC. Appellant stood trial on a charge that he trespassed into the residence of deceased Karthiayani sometime between the evening of 24-8-88 and the evening of 25-8-88, caused her death and committed robbery. P.W. 4 grandson of the deceased went to her house on the evening of 25-8-88 to invite her for "Onam". He found the door closed and the key in the key hole. He waited for a while and then called the son of P.W. 5 for company. A little later the boys who were at the end of their patience, pushed open the door and found Karthiayani lying dead. They then cried out, attracting the attention of others. P.W. 4 then went to fetch his parents. To cut a long story short, intimation was sent to police, they registered a first information report, came on the scene, prepared Ext. P2 inquest, sent the dead body for postmortem, lifted finger prints, completed investigation and laid the charge sheet. Appellant denied the charges and protested his innocence.

2. Prosecution relied on the following circumstances to establish the charge :

- a) Presence of the accused in the vicinity of the scene around 7 p.m. on 24-8-88 (P.W. 5).
- b) Conduct of Appellant-accused in moving away from the scene on the arrival of police dog squad.
- c) The extra-judicial confession made by accused, spoken by P.Ws. 9, 18 & 19.
- d) Recovery of M.Os. 7, 8 & 9 articles belonging to deceased, pursuant to a statement made by Appellant.
- e) Conduct of Appellant in stabbing himself when apprehended by P.W. 21 police officer.
- f) Identity of finger prints on M.O.3 and those of the accused (Ext. P8 -- P.W. 13) and
- g) Sale of M.O. 8 article belonging to deceased by Appellant (P.W. 6).

Relying on some of the circumstances, the Court of Session found the Appellant-accused guilty. The appeal is against that. In CrI. R.C. 7/93, notice was issued to the Appellant to show cause why the sentence of death should not be imposed on him, in the event of the conviction being upheld.

3. By turn of events it has become unnecessary to consider the appeal on the evidence or the CrI. R.C. 7/93 on merits because, a preliminary objection raised by learned counsel for the Appellant has to be sustained.

4. Counsel submitted that accused-Appellant was seriously prejudiced, because of the negation of the opportunity to defend himself provided by Section 233 of the Code of Criminal Procedure. Section 233 of the Code envisages that in cases where an order of acquittal is not entered u/s 232, the accused :

Shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

Two Division Benches of this Court in [Parmeswara Kurup Janardhanan Pillai Vs. State of Kerala](#), and Sivamani v. State of Kerala 1992) 2 Ker LT 227 have stated that the section is mandatory and that it must receive strict adherence. We do not propose to go into the question whether the requirements of Section 233 are matters of substance or form, in view of earlier pronouncements of this Court.

5. In the state of law, the accused must be informed of his right by the trial Judge and an effective and meaningful opportunity to adduce evidence in his defence must be extended to him, when necessary by giving reasonable adjournments. While acting u/s 233, the court must tell the accused that he has a right to enter on his defence, even if he is represented by counsel. Then, the court must also tell him that he can adduce evidence in support of his defence. If he needs time for that, he

is entitled to have such time. Section 233 embodies a deep rooted principle, recognised in trials, namely that, no man shall be condemned, in his defence without hearing him.

6. Court below did not comply with Section 233 of the Code. For that reason, we set aside the conviction and sentence and remit the case to the Court of Session, for proceeding further from the stage visualised by Section 233 of the Code. We make it clear that the findings on facts made by the court below are set aside. It will be open to the trial Judge to draw appropriate inferences from the evidence on record, unfettered by any finding entered in the judgment dated 30-3-1989. We also make it clear that we have not expressed any opinion on the question of sentence. The Court of Session will address itself to all the relevant aspects, and come to an appropriate conclusion.

The appeal and the CrI. R.C. are disposed of as aforesaid. Records will be sent down forthwith and the case will be posted in the Court of Session on 22-3-1993. On that day the Court may adjourn the case for further consideration.