Gopalan Nair Krishna Pillai Vs State of Kerala and Others

Court: High Court Of Kerala

Date of Decision: Aug. 30, 1988

Acts Referred: Evidence Act, 1872 â€" Section 118, 13
Penal Code, 1860 (IPC) â€" Section 107, 109, 306, 313, 323
Probation of Offenders Act, 1958 â€" Section 6

Citation: (1988) 2 KLJ 411

Hon'ble Judges: S. Padmanabh, J

Bench: Single Bench

Advocate: M N. Sukumaran Nayar, B. Raman Pillai and S. Vijayakumar, for the Appellant; Chincy Gopakumar, Public Prosecutor, for the Respondent

Judgement

S. Padmanabh, J.
PWs 1 and 3 are the off springs of the marriage between Chandrika god first accused solemnised in 1974. Second

accused is his sister and third accused is their brother"s son. Due to reasons including poverty and death of her father, Chandrika was not able to

persuade her mother successfully to get the promised dowry though she was sent often for that purpose by the first accused. The result was

cruelty, ill-treatment and neglect in personal conduct and treatment while in station and through letters from the place of employment in the Air

Force at Poona. For that reason the children were also disliked and neglected. Chandrika had to take shelter with her parents occasionally along

with her children and once they had to be so for a continuous period of four years and was forced to contact his superiors to get maintenance

against his wishes. Finally she had to come back to his house with the children in obedience to his telegram disobeying her mother woo knew what

is going to happen. By the end of December 1983 when Chandrika was in the house of the first accused who was also there on short leave, her

people came as directed by him. But nothing happened except discourtesy towards them and cruelty towards Chandrika who was even asked to

commit suicide. While so, on the evening of 25-1-1984 at about 7 or 7.30 PM when the first accused was away at Poona." second accused

questioned the morality of Chandrika and started a quarrel. When she resented criminal intimidation and manhandling by accused 2 and 3 followed

and it ended in exhortation to commit suicide suggesting the availability of poison inside the house with a further threat of murder otherwise.

Frustrated by all these, Chandrika rushed to the room where she knew a bottle of Ekalax was kept. Picking it up, she went to the bath room and

consumed a portion of it before it was snatched away by her mother-in law PW21 on hearing cries of PWs 1 add 3. Though neighbours look her

to the hospital, she died at 10.10 PM. This is the version on which the three accused were charge-sheeted for the offences punishable under

sections 323, 506 (ii) and 306 read with sections 34 and 109 of the Indian Penal Code. The Sessions Judge discarded Section 34. All the accused

were convicted and sentenced u/s 306 to rigorous imprisonment for 10 years each with the aid of section 109. Accused 2 and 3 were further

convicted and sentenced to rigorous imprisonment for one year and seven years each under sections 323 and 506 (ii) permitting the sentences to

be suffered concurrently. Appeal is by all the three accused.

2. Before entering the discussion, I may say that the Sessions Judge acted illegally in convicting and sentencing accused 2 and 3 separately for the

offences under Sections 323 and506 (ii) So also, there was no necessity of invoking section 109 when section 306 itself consists of the offence of

abetting suicide. Offences under sections 323 and 506 (ii) committed by accused 2 and 3 are parts of the intentional aiding commission of suicide.

When they are convicted and sentenced for the offence u/s 306 on account of those acts also, separate convictions and sentences for those

offences will amount to tribal penalty for the same offence. Therefore the conviction and sentence for those offences must necessarily go. The only

question for consideration is whether the prosecution succeeded in proving the guilt of the three appellants u/s 306.

3. Certain facts proved by the prosecution evidence are not at ail in dispute. They are: PWs 2 and 21 are the father and mother of accused land 2

and accused 2 and 3 were present at the time of occurrence. Chandrika and PWs 1 and 3 as well as second accused and her children were

residing along with PWs 2 and 21. Second accused questioned the morality of Chandrika and told her that she brought shame to the family. A

bottle of Ekalax was there in the house and after the quarrel. Chandrika picked it up and consumed a portion of it after entering the back room On

hearing the cries of PWs l and 3, PW 21 snatched away the bottle. PWs 10 and 11 are neighbours. They came and along with others Chandrika

was taken to the hospital where she died at 10.10 P.M. Ext. PI first information statement was given by PW2 the next morning. The letters

produced by the prosecution as written by the first accused was actually written by him. Dispute seems to be only oh the intentional aiding by the

first accused by his cruelty and the same by accused 2 and 3 by assault criminal intimidation and exhortations.

4. The two main arguments advanced on behalf of the appellants were that cause of death is not proved as suicide by consumption of Ekalax and

even if it is taken as proved and the prosecution evidence is accepted an offence u/s 306 cannot be taken as proved. I cannot agree. PWs 2 and

21 who are very much interested in the accused and did their best to help them had to admit that Chandrika consumed Ekalax kept in the house

for being used as pesticide. PWs 1 and 3 also saw her using it. It was PW 21 who snatched away the bottle after it was half consumed. PWs 10

and 11 said Chandrika told them she consumed poison since she did not want to live. PW 4 is the doctor, before whom Chandrika was taken

alive. His evidence and Ext. P2 certificate issued by him show that it was a case of poisoning oregano phosphorous. The bottle containing the

balance poison seized by the investigating officer and identified by the witnesses was sent for chemical examination and Ext. P15 is the report

which shows that quinalphos which is an active ingredient in Ekalax was detected in it. White questioned u/s 313, accused 2 and 3 admitted the

evidence that it is a case of suicide by consumption of poison. First accused only pleaded ignorance or. But the postmortem certificate issued by

PW 5 reserved opinion as to cause of death pending receipt of report of chemical examination of viscera contents. The prosecutor did not attempt

to get the report of chemical examination or ascertain cause of death from PW 5.

5. But the Sessions Judge held that in view of the other items of evidence, this is not a lacuna a all. Anyhow, I sent back the records for further

examination of PW 5 with reference to the report of chemical analysis of the viscera contents to ascertain the cause of death and pointed out that

the prosecutor failed in his duty of getting the case adjourned to bring the report are examine the doctor, and the court was also not alive to the

situation. Still even though PW 5 was again examined, the prosecutor satisfied him self with putting Ext. P15 to him as if it is the report of the

chemical analysis of the viscera contents even though a reading of that document and my order would have convinced him otherwise. Therefore, I

had to cite PW 5 again to prove Ext. P22 which is the report of chemical analysis of the viscera contents. The accused were again questioned. PW

5 said that when he was examined twice before the Sessions Judge Ext. P22 was brought by him but the prosecutor did not want it and the first

time he was not asked about cause of death at all. He said that the second time he was told by the prosecutor that Ext P15 is the report of

chemical examination of the viscera aid he was made admit so without showing the whole of it but only the last portion containing the opinion. His

evidence appears to be correct in this respect. Otherwise no doctor of the age and experience of PW 5 is likely to utter a falsehood before court

that Ext. P15 which is the report of analysis of the Ekalax in the bottle is actually the report of analysis of the viscera contents and give opinion as

to cause of death accordingly. Probably the prosecutor was doubtful whether" a new document of which copy was not given could be brought in

and he wanted to save his skin by a mistaken identity. Any how lam not in a position to accept that Ext. P22 is a manipulation as argued The

evidence of PW5 examined before me reveals that Ext. P22 in the genuine report, and the circumstances under which he got it as Well as the

reason why he mistakenly admitted Ext P15 as Ext P23. The other evidence also indicates the genuineness of Ext P22. In Ext. P22, Ext P23 and in

the box before me he gave the opinion regarding cause of death as can assumption of Ekalax which contains the deadly poison. Cause of death is

thus clearly established as suicide by poison as spoken to by the witnesses.

6. PW 9 is the sister and PW. l7 the mother of deceased Chandrika, From their evidence as well as from Exts P6 to P9 letters sent by the first

accused to the deceased, Ext. P10 money order coupon, Ext. P11 letter from the military officer as well as Ext. P17 letter be first accused to his

parents the following facts are clear. Since the deceased was not able to bring the dowry the first accused was treating her cruelly and calling her a

beggar who is not wanted in his house for any thing. He even wanted divorce and asked her to do what she likes including litigation and he is

unconcerned. She was being threatened that he will do what eye he wants or stay wherever he likes but not with her and remarry. The deceased

had to go to PW 7 several times for money and she had to stay back in her house several times with children. Once she had to reside in her house

with children for four years. Then she went to the house of the first accused with the children in obedience to his telegram ignoring the protest of

PW 17. But the cruel treatment continued. The deceased was not being given maintenance and the children were also disliked by him only because

she was not able to bring money. The deceased was forced to complain to the superiors in Air Force and first accused was forced to sent her

money. He threatened her that this forced benefit will not survive long. Then in December 1983 when he was here for a pilgrimage to Sabarimala,

he wanted PW 17 to sent somebody responsible if they want to talk. PW 17 sent PW 9 along with PW 20 (a neighbour) and Navakumaran Nair,

her husband''s brother. But the reaction was been co-operation and PW 9 was able to hear the first accused quarrelling with the deceased and

asking her commit suicide and die deceased crying. Even though PW 9 requested the deceased to go along with her taking the children, she

refused. There is absolutely no reason to disbelieve these versions, most of which are borne out by records. To some extent PW 20 also support

them

7. It is clear from the above items of evidence that the first accused was the maximum cruel to his wife and ill-treated her like anything, the only

reason being that she could not bring money. It is further clear that she was frustrated, but continuing in the house of the first abused only because

she had to do so on account of her children. The evidence of PWs 1 and 3 that she was heard talking about suicide on earlier occasions is relevant

in this respect and reveals her mental attitude on account of its behaviour. Though the counsel for the appellants says that all these are remote

incidents which cannot be taken as intentionally aiding suicide, it cannot be accepted. The treatment she had from the first accused had its own

reaction and contribution to the suicide which was intentionally aided by him also on account of his thirst for money.

8. Ext. P17 and the other items of evidence show that the attitude of the first accused towards the deceased was well known to his parents and

accused 2 and 3. It is an undisputed fact established by the evidence of PWs 2 and 21 also that nope of the relatives including accused 2 and 3

and PWs 2 and 21 accompanied the deceased to the hospital even though she was taken by the neighbours in a serious condition. Even after death

was known they went to the hospital only early morning. Normally that may not be the attitude towards a daughter-in-law or sister-in-law or aunt if

there is any love or affection. This is also an eye opener to appreciate the evidence.

9. The fact that second accused started the quarrel by questioning the deceased on a suspicious conduct with a neighbour four days back is an

undisputed fact spoken to not only by PWs 1 and 3, but by PWs 2 and 21 also even though they were interested in helping the accused. The

presence of the third accused was also admitted by them. Even though first accused was writing all rubbish to her, it is pertinent that her chastity or

moral was not at all questioned. In this background, the quarrel could evidently be only on an imaginary suspicion for the support of which there

are only the versions of PWs 2 and 21. The statement in Ext. PI that such a scandal was spread by a neighbour could only be an invention of PW

2 to support his daughter in having questioned the deceased. It is strange that PWs 2 and 21 kept silent and the matter was taken up only by the

second "accused.

10. After having admitted the beginning of the incident, PWs 2 and 21 only pretends ignorance of what further transpired before consuming poison.

PWs 10 and 11 are two neighbours who turned hostile. Both of them admitted the first part of the quarrel and the strained relationship of Al and

the deceased. So also they said that deceased told them that she consumed poison and she does not want to live PW 11 said that the deceased

denied the allegation of the second accused who repeated the same. Her evidence further shows that there was a commotion in the house which

persuaded her to request somebody else to go to the house and enquire. But she refused to clarify further. Probably these two witnesses were

biding facts because of the neighbourly relationship., Anyhow it is cleat that PWs 2 and 21 were concealing part of the incident which came out

atleast from PW 11 to support PWs 1 and 3.

11. As to what further transpired, We are therefore having only the evidence of PWs land 3. It is true that on minute details and sequence there is

some little disparity between them. Anyhow their version that the deceased denied the allegation of the second accused is supported atleast by

PW11. After having denied such an allegation that came from a hostile source the deceased would never have committed suicide if nothing further

happened especially when she had two little children who were treated with hostility even by the father. The broad facts that emerge from the

evidence of PWs 1 and 3 is that accused 2 and 3 criminally intimidated her with fear of death, manhandled her, asked her to go away and commit

suicide or take the poison from the house and use it, lest she will be done away with. There may sometimes be an element of overdoing in their

versions which may be conscious or unconscious. The fact that there are no visible injuries on the deceased is no reason to disbelieve the

manhandling which need not necessarily cause visible injuries. The version given by PWs 10 and 11 that the deceased admitted having consumed

poison and wanted to put an end to her life indicates that what PWs 1 and 3 said must be true. Their version that they cried aloud that their mother

is consuming poison is supported not only by PW12 and 11, but also by PWs 10 and 11.

12. Some little discrepancies and contradictions on minute details is not only possible but inevitable also in the evidence of truthful witnesses. Such

discrepancies not in any way affecting the substrata of the prosecution case only adds to the credibility of these witnesses. Life of Chandrika, as the

evidence of PWs 1 and 3 show, was thoroughly frustrated by the neglect, cruelty, till-treatment aid insult of the first accused and her thought of

suicide was being kept away from the oscillating life only on account of the future of the two children. The action of accused 2 and 3 which

reached its climax by the defamatory imputation, assault, criminal intimidation and exhortations intentionally made gave her no escape and she was

forced to resort to the drastic step.

13. What is applicable in this case is the third para of section 107 I.P.C which is intentionally aiding the commission of suicide by any act or that

omission. In order to amount to abetment there must be means rea or community of intention. Without knowledge or intention there can be no

abetment and the knowledge and intention must relate to the crime In order to prove abetment by illegal omission, it must be shown that the

accused intentionally aided the commission of the offence by non-interference and the omission must involve breach of a legal obligation. Husband

keeping silent when the wife threatens or commits suicide or even saying that she could do what she liked may not amount to abetment by illegal

omission (Raj Kumar V. State of Punjab 1981 Cri. L.J. 178). A person can be said to abet by aid only when by commission of an act he insists to

facilitate the commission of the crime and does facilitate commission thereof. There must be intentionally aiding commission of the crime. Mere

proof that the crime charged could have been committed without the interposition of the alleged abettor is not sufficient for the requirements of

section 107 IPC. In order to invoke section 107, it is not enough if the act on the part of the abettor happens to. facilitate commission of the

offence. Even without the alleged abettor intending or desiring so and even in Spite of him, it may sometimes happen like that. That is why the

section provides the intentional aiding. Active complicity with the required intention is the gist of the offence of abetment under the third para (see

Shri Ram Vs. The State of U.P., .) Procuring or providing poison to a person to enable him to commit suicide is clearly a case of abet men, of

suicide falling under sec. 306 lPC Neehkantan Nair Chandrasenan Nair v. State of Kerala'' I. L. R 1972(1) Ker 589). In the present case, if the

prosecution evidence is believed it is a clear case of abetment of suicide by all the three accused. First accused said, did and wrote whatever he

could to make the life of the deceased miserable and desperate. That is the main or rather sole reason for the actions, inactions and hostility of the

other accused and PWs 2 and, 21 also towards her. If she was a wife loved by him these things would not have happened. But I do not mean to

say that the imputation of immorality by itself or the inaction of accused 2 and 3 after consumption of poison will amount to abetment. The inaction

only helps in appreciating the mental element in them which forced them to do al'' these things. It may not be possible to ignore the actions of the

first accused as remote. The last blow was given by him only hardly a month before the event even though he was not present when suicide took

place

14. In the matter of appreciating the evidence of the child witnesses the learned counsel drew my attention to the decisions in Gunduchi I''atnaik

and another v. State of Orissa (1985 Crl. L. J. 645), Munna v. State (1985 Crl. L. J. 1925) and State of Bihar and others Kapil Singh and

another (A I R. 1969 Supreme Court 53). These cases were dealing with child witnesses whose testimonies were tainted in many ways Panda

Nana Kare v. State of Maharashtra (A. I. R. 1979 Supreme Court 697), State of Orissa v. Mr. Brahmananda Nanda (A. I. R. 1976 Supreme

Court 2488), Muluwa and others v. State of Madhya Pradesh(916 (1) Supreme Court Cases 37) and Babuli v. State of Orissa (A. I. R 1974

Supreme Court 775) relied on dealt with solitary eye witnesses who did not disclose identity of the culprits without delay. Balakrishna Swath v.

State of Orissa (A. I. R. 1971 Supreme Court 804) and Bhagwan and another v. State of Madhya Pradesh (A. I. R. 1980 Supreme Court 1750)

considered cases where there were undue and unexplained delay in the material witnesses being questioned by the investigating officer. Sharad

Birdkichand Sarda v. State of Maharashtra (A. I. R. 1984 Supreme Court 1622) was relied onto show that evidence of interested witnesses who

may have atleast an involuntary bias may have a tendency to exaggerate things even unconsciously and hence their evidence will have to be

examined with very great care and caution. There cannot be any dispute regarding the propositions laid down in these cases. But each case will

have to be decided on its own merits. The first few among these decisions also dealt with the danger of solely relying on the evidence of interested

child witnesses who are to be tutored to give a parrot like story.

15. It is true that there was delay of about 10 days in questioning PWs 1 and 3 during which period they wire in the custody of their maternal grand

parents who are not favourably inclined towards the accused on account of the incident. It is also true that the child witnesses themselves are

interested and there is possibility of coaching them up. But as held in Dalip Singh and Others v. State of Punjab (AIR. 1979 Supreme Court 1173)

trustful versions of child witnesses cannot be rejected merely on the assumption that there was possibility of coaching to give a false parrot like

story. It is not possibility that has to be looked into. The question is whether the evidence is tutored and tainted. The delay in questioning is not at

and material. It is not intentional, It was PW2 who gave the first information statement. He gave statement as if it is a mere case of suicide and

hence a case was registered only under the caption ""unnatural death"". It is quite natural that in such a case the investigating officer may not be

serious in questioning them. Ext P16 report of the investigating officers shows that the offence u/s 306 and involvement of the accused became

known only on 5-2-1984. On that day itself, PWs 1 and 3 were questioned. Their evidence do not show any signs of coaching or any artificiality

or falsehood. Further on all material particulars except the details of the manhandling and exhortation and criminal intimidation their evidence is

amply corroborated. On the uncorroborated aspects also their evidence is probabilised as discussed above. Toe Sessions Judge who had the

advantage of seeing these witnesses and noting their demeanours found their evidence reliable aid I have no reason to interfere.

16. There is no point in saying that PWs 1 and 3 were not questioned properly to ascertain their competence u/s 118 of the Evidence Act

particularly to ascertain whether they were aware of the necessity of speaking truth before court. But that is a matter effecting competency alone

unlike section 13 of the Oaths Act which involves admissibility also. Now their full evidence is before court and it is only a question of scanning it.

In so doing. I will have to give due weight to the opinion of the trial judge. Any irregularity fin questioning or administering oath cannot affect

credibility otherwise found.

17. There is no rule of law which says that evidence of child witnesses cannot be accepted. Child witness is just like any other witness except the

possibility of the danger of being tutored by interested elders to give out a coloured version which they want. Being easily amenable to tutoring by

influence and capable of giving out that version by their capacity to remember and reproduces the evidence of such witnesses will have to be

carefully considered against the possibility of touch danger. When once that danger, which gives only a rule of caution to court, is ruled out, the

evidence is having better sanctity than that of elders on account of the innocence of tender age and incapacity of malice and consequent

concoctions. The rule of caution and prudence becomes greater when the child witness is the sole witness and the possibility of coaching by

stranger and infirmities are there. When the evidence is not having any of these infirmities and it is corroborated from other sources there is

absolutely no justification in rejecting the evidence assuming mere possibility of tutoring. I believe the evidence in agreement with the Sessions

Judge, and find that all the three accused committed the offence punishable u/s 306 of the Indian Penal Code.

18. While confirming the conviction of all the three appellants for the offence punishable u/s 306 I.P.C. I allow the appeal in part and set aside the

convictions and sentences against appellants 2 and 3 for the offences under sections 323 and 506 (ii) I.P.C. and acquit them of these charges for

the reason earlier stated. Both sides were heard on the question of sentence. At the time of commission of the offence and conviction by the

Sessions Judge, the third accused was below the age of 21 and I see no reason to go against the mandate of section 6 of the Probation of

offenders Act so far as the third accused is concerned. He only came there by chance and happened to take part in the offence when second

accused started the game. Therefore, instead of sentencing the third accused to any term of imprisonment or fine for the of force u/s 306 I. P. C.

forthwith,,he is ordered to be released on probation u/s 6 of the Probation of Offenders Act on his executing bond for Rs. 10,003/- with two

solvent sureties each for a like amount to appear and receive the sentence within a period of two years, if called upon to do so, and in the

meantime to keep the peace and be of good behaviour. The Sessions Judge will see that during the said term periodical reports will be called for

from the District Probation Officer and ascertain whether the conditions are duly observed. Since I feel so in the nature of the crime and the

circumstances the sentence as against accused land 2 for the offence under section; 306. I. P. C is reduced to rigorous imprisonment for three

years. The sessions Judge will see that the sentences are executed.