(1959) 10 KL CK 0040

High Court Of Kerala

Case No: Criminal Appeal No. 90 of 1959

Eacharan Asari	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision: Oct. 21, 1959

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302

Citation: (1959) KLJ 1230

Hon'ble Judges: K. Sankaran, C.J; S. Velu Pillai, J

Bench: Division Bench

Advocate: Mammen Varghese, for the Appellant;

Final Decision: Dismissed

Judgement

Velu Pillai, J.

The appeallant has been convicted by the Additional Sessions Judge at Parur u/s 302, I.P.C. for having caused the death of his wife Karthiayini by hacking her head a number of times with an axe at about 8 A. M. on the 1st December, 1958. The appellant was living with his wife, his daughter Omana, and his mother P.W. 5. He and his father-in-law, P.W. 6, decided to go on pilgrimage to Sabarimalai, and for that purpose, they commenced the preliminary observance of pollution by wearing a chain each on the 15th November, 1958. Seven days before the occurrence, when Karthiayini commenced her period, she removed herself to the house of the appellant''s brother Krishnan, about 100 feet to the east. After her bath on the morning of the 1st December, she returned to her house, when she was taken to task by the appellant, for not returning after the fourth day of her period. According to the prosecution, she retorted, asking the appellant how it concerned him. Upon this, the appellant snatched a wood-cutter''s axe and cut her on her back. She ran out of the house crying aloud and entered the verandah of Krishnan''s house. P.W. 2, Krishnan''s wife, and P.W. 3, the wife of Kunjan, another brother of the appellant, also living close by, hurried there. In the meantime, the appellant came running

after his wife with the axe, and when she ran out to escape, she fell on the courtyard, and the appellant then inflicted several cuts on her head with the axe and she died immediately. The commotion had attracted P.W. 1, a neighbor, who witnessed two of the final cuts made by the appellant on his wife, standing a little to the south. P.W. 1 then proceeded to the police outpost about a furlong away, and returned to the scene in the company of two police constables. At that time the appellant was in his house washing the axe and he was taken to the outpost and arrested by P.W. 8 one of the police constables on duty. He was afterwards taken to the Thodupuzha police station, where P.W. 1 gave a statement, Ext. P. 1, which was treated as the first information. After the investigation was completed, a charge u/s 302 was laid against the appellant, and on commitment he was tried and convicted as stated above. The appellant pleaded guilty in the Sessions Court when the charge was read and explained to him; but the learned Judge allowed the trial to proceed. In his statement u/s 342, Crl. P.C., the appellant did not offer any explanation for the several circumstances brought to his notice by the learned Judge; in the end he explained, that when he questioned his wife on her return, she answered that she liked living with Krishnan and not with him, and employed hot words against him, upon which he did something. In the appeal memorandum in this Court in ground No. 6, he seemed to admit the occurrence, but pleaded for mercy, having acted under provocation, adding in ground No. 5, that he suspected her chastity, and that there ensued an exchange of words between them. The learned Sessions Judge believed the eye-witnesses. P. Ws. 1 to 3, and came to the conclusion, that the appellant caused the death of his wife. He also held, that the act of the appellant was not saved by Exception 1 to Section 300, I.P.C.

2. Karthiayini had sustained fourteen injuries, of which three alone were abrasions and the others were mostly lacerations on the head. Injuries numbers 2 to 5, as recorded in the post-mortem certificate, were necessarily fatal and death was instantaneous. There can be no doubt on the evidence, that Karthiayini died as a result of her wounds.

3. The complicity of the appellant has been clearly established by the direct evidence of P. Ws. 1 to 3. Though P.W. 5 was not believed by the learned Sessions Judge as to the infliction of the first injury on Karthiyani, while she was in the appellant''s house, her evidence, that when Karthiayini was running out of the house, she had a bleeding injury on her back, can be accepted. The evidence of P. Ws. 2 and 3 is clear and consistent, that the appellant inflicted several injuries on Karthiayini in the courtyard of the house of Krishnan. As already observed, P.W. 1 was able to witness only two of the final cuts with the axe. There is a discrepancy in his evidence, because he has stated in Ext. P. 1, the first information, that Karthiayini fell on the ground after the cuts were received by her, whereas in his deposition he said, that Karthiayini was lying on the ground when the cuts which he witnessed, were received by her. The witness explained that he felt somewhat confused in making the earlier statement. We consider, that the evidence of P.W. 1 cannot be rejected

on this ground. We therefore accept the evidence of P. Ws. 1 to 3 and also that of P.W. 5 to the extent to which it was relied on by the learned Sessions Judge, and come to the conclusion, that the appellant was responsible for inflicting the injuries on Karthiayini, as a result of which, she died. The only question for decision is, what is the offence committed by the appellant. Though P.W. 5 was not fully believed by the learned Sessions Judge as to what took place inside the room in the appellant''s house at the time of wordy quarrel, it is the prosecution case, that there was a wordy quarrel between the appellant and his wife, when the latter returned to the appellant''s house on that morning. The appellant did not set up a specific case as to the provocation which he had, in Ext. P. 13, his statement in the committal court. The theory of provocation appears to have been developed only in the statement made by the appellant u/s 342, Crl. P.C. and the Learned Counsel for the appellant was not able to draw our attention to anything in the cross-examination of the witnesses in support of that theory. There is good room for thinking that the theory put forward by him in his statement u/s 342, Crl. P.C. was the result of an after thought, and cannot be accepted at its face value. Even granting that it can be so accepted, we do not think, that it affords a sufficient basis, to bring the case against the appellant within Exception 1 to Section 300, I.P.C. The present, is not a case similar to In re. Murugien, 1957 (1) M.L.J. (Crl.) 271, on which reliance was placed by the Learned Counsel for the appellant. In that case, the accused, on his return early morning, found his wife in a compromising situation in the company of her paramour. He then stabbed the intruder, and ordered his wife to leave the house. Upon a complaint preferred against the accused, the police were in search of him. Knowing this, the accused proceeded to the police station taking his wife also with him. As they were approaching the police station, the accused stabbed his wife with a bichuva four or five times and she died. It would appear from the facts recited in the judgment in that case, that not only the accused saw his wife in that situation, but also, she swore "openly in the face of the husband that she would persist in such adultery, and also abused the husband for remonstrating against such conduct just before she was stabbed. On these premises, the court had no difficulty in coming to the conclusion, that in inflicting the stabs on his wife, the accused was deprived of the power of self-control by reason of grave and sudden provocation. That case affords no parallel to the present, in which, even on the showing of the appellant there was no admission by Karthiayini of adultery, or of a determination to persist in such conduct.

A statement by the wife that she was going to live with another man or was about to commit adultery, does not amount to provocation so as to reduce the crime of killing from murder to manslaughter" See Law of Crimes by Ratanlal, 19th Edition, page 728, based on In re. James Ellor, 26 Cox 680.

It is for an accused person who relies upon an exception, at least to make out a reasonable and acceptable case, though he is not bound to establish it beyond reasonable doubt. We consider, that the appellant has not succeeded in discharging

this burden. At the same time we do think, on the broad circumstances of the case, that the appellant had acted under some degree of provocation, which, though not grave and sudden, is sufficient to justify the imposition of the lesser sentence u/s 302 I.P.C. This is what the learned Sessions Judge has done. We agree with him and hold, that the appellant was rightly convicted u/s 302 I.P.C., and that the sentence imposed on him, is proper and justified. The appeal is dismissed.