

(2013) 03 KL CK 0155

In the High Court Of Kerala

Case No : D.S.R. No. 3 of 2010 and Criminal A. No. 90 of 2011 & D.S.R. No. 3 of 2010 and CrI. Appeal No. 90 of 2011. (Sessions Case No. 240 of 2010 of Additional Sessions Judge (Ad hoc-I), Manjeri Division.)

State of Kerala

APPELLANT

Vs

Ramachandran

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 4 KHC 10

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : R. Ranjith, P.P, for the Appellant; Renjith B. Marar, C.V. Manuvilsan, P.G. Suresh, K. Vidya and Rajan Vishnuraj, for the Respondent

Final Decision : Disposed Off

Judgement

K.T. Sankaran, J.—Criminal Appeal No. 90 of 2011 was filed by Ramachandran, the accused in Sessions Case No. 240 of 2010 on the file of the Court of the Additional Sessions Judge (Ad hoc-I), Manjeri, challenging the conviction and sentence u/s 302 of the Indian Penal Code. The Sessions Court sentenced the appellant to capital punishment. DSR No. 3 of 2010 is the Reference u/s 366 of the Code of Criminal Procedure in the same case for confirmation of the sentence. The accused (Ramachandran) is a carpenter by profession. He married Suchitra and in that wedlock, three children, viz., Vijisha, Prajisha and Meghanathan were born. The accused was not in good terms with his wife Suchitra for several years and she was residing separately. However, the accused brought back Suchitra to the matrimonial home a few weeks before 05/09/2009. The prosecution case is that on 05/09/2009 at about 9.15 p.m., the accused quarrelled with his wife and after bolting the door from inside, he committed murder of his wife by inflicting several injuries on various parts of her body with MO 1 chisel. The children and mother of the accused were sleeping in the room in front of the house (Poomukhamuri) and they woke up on hearing the quarrel

between the accused and his wife. The accused forcibly pulled the deceased into the idanazhi of the house and bolted the door from inside. She was taken to the bed room on the north eastern side of the house and inflicted about 40 cut injuries on the body of the deceased.

2. On hearing the hue and cry, Ajeesh, the neighbour (PW 1) went to the house of the accused. Shaiju, Rajan (PW 2) and others also came to the residential compound. On knowing that the accused and the deceased were inside the room, the persons who assembled there broke open the door of the house. They found the wife of the accused lying dead in a pool of blood. The accused came out with the blood stained chisel. By that time, several people had assembled in the house of the accused. On seeing the people, the accused came back and went inside the house.

3. Ajeesh (PW 1) gave Ext. P1 First Information Statement to the Sub Inspector of Police (PW 13) and Ext. P1 (a) FIR was registered at 10.45 p.m. on 05/09/2009. The Circle Inspector of Police (PW 14) conducted the inquest and prepared Ext. P2 report. The postmortem of the body of the deceased was conducted by the Assistant Surgeon of the District Hospital, Manjeri (PW 5) on 06/09/2009. Arrest of the accused was recorded at 1 p.m. on 06/09/2009. At 4.30 p.m. on 06/09/2009. Ext. P8 scene mahazar was prepared by PW 14, which was witnessed by PW 9.

4. MO1 chisel was recovered as per Ext. P9 mahazar, as pointed out by the accused, which was concealed by him under a box. MO 1 was recovered on the basis of a disclosure statement made by the accused after his arrest. MO 2 dothi and MO 3 shirt worn by the accused at the time of the incident were seized as per Ext. P7 mahazar. MO 4 maxi, MO 5 underskirt, MO 6 brassier and MO 7 underwear which were worn by the deceased were seized at the time of preparing Ext. P2 inquest report. The hairs collected from MO 1 chisel were found to be similar to the hair collected from the scene of occurrence, as revealed from Ext. P19 report submitted by the Scientific Assistant (Biology) of the Forensic Science Laboratory, Thiruvananthapuram.

5. The prosecution examined PW 1 to PW 15 and marked Exts. P1 to P19 and identified MO 1 to MO 11.

6. PW 1 went to the house of the accused on hearing the cry of the children of the accused. Neighbours were also present there. PW 1 stated that he brought Sukumaran, the younger brother of the accused also to the house. They broke open the door. It was found that the wife of the accused was lying dead and the accused was standing with MO 1 chisel in his hand. PW 1 stated that he informed the police and gave the First Information Statement. According to PW 1, the accused committed the crime, as he had suspicion about the chastity of the deceased. Only about two weeks before the incident, they started residing together, after their living separately for quite some time. PW 2, a neighbour narrated the incident, as done by PW 1. PW 3 Vijeesh is the daughter of the

deceased. She was aged 17 years at the time of her examination before Court in 2010. She stated that the deceased and the accused were in the bed room, while their children were sleeping in the room on the front side. The mother of the accused and the children of Sukumaran (the brother of the accused) were also in that room. They heard the deceased and the accused quarrelling. The deceased came to the front room (Poomugham) and put on the light. At that time, the accused pulled the deceased and MO 1 chisel was in his hand. The accused closed the door. They heard the cry of the deceased. The children of the accused also cried aloud and the neighbours came. She also narrated the incidents which were spoken to by PW 1 and PW 2.

7. PW 5 detailed in Ext. P3 post-mortem report, the ante-mortem injuries, external as well as internal, as follows:

Injuries (Ante-mortem) External:

1. Lacerated wound 11 x 2 x 2.5 cm. having sharp edges and tapering ends involving right side of face, upper inner end at 3 cm. below root of nose and at margin of ?.... (not legible) nose.
2. Lacerated wound 3 x 1.5 x 1 cm.: horizontal, involving (L) cheeks of face, with sharp margins and tapering ends, inner end at (L) angle of mouth.
3. Crescent shaped lacerated wound 10x3x2 cm. involving front of middle of neck, upper margin at 2 cm. below chin.
4. Lacerated wound 17 x 11 x 4 cm., horizontal, involving (L) side of neck, extending from 2 cm. to left of front mid line at 3 cm. below injury (3) and pass through 1 cm. below ear lobule and ends over occiput, the injury showed sharp margins and tapering ends and also showed few skin tags still attaching margins of wound.
5. (L) ear lobule found amputated and lost, the wound on stump measures 2 x 0.5 cm.
6. LW 7 x 1 cm. x bone deep involving middle of top of head. Vertical.
7. LW 6 x 0.8 cm. x bone deep involving (r) tempora - parietal area of head, lower end at 4 cm. outer to midline and 10 cm. to the back of front hair ling.
8. Two lacerated wounds, upper 8 x 3 x 1 cm., lower 6 x 2 x 1 cm. at 2 cm. apart involving back of (r) shoulder blade.
9. Two lacerated wounds 5x1x2 cm., horizontal, involving back of root of neck, other one at 5 cm. below this injury, measured 4 x 2 x 1 cm. over (r) shoulder blade.
10. Lacerated wound 6 x 2.5 cm. x 5 cm. involving middle of back of thorax and upper abdomen, vertical in the midline back, and penetrated into abdominal cavity.

11. Seven lacerated wounds, all around injury (10) involving back of trunk, measured, 5x2x1 cm. at outer aspect of (c) chest, 6x2x1 cm., 5 x 1.5 x 1 cm., 3x2x3 cm., 8x2x1 cm., 6x2x4 cm., and 5 x 1.5 x 4 cm., from above downwards, at 3 - 32 cm. distance from injury (10), lower one at back of left side of abdomen at 2 cm. above top of hip and 17 cm. outer to mid line Back.
12. Two lacerated wounds, upper 8x3x1 cm. oblique, lower 3x2x1 cm., oblique, at 13 cm. apart, upper one at 4 cm. below top of hip, both involving back of(r) buttock.
13. Lacerated wound 15 x 5 x 3 cm., vertical, involving back of (L) buttock, lower end at 15 cm. outer to natal draft and at 3 cm. below margin of buttock.
14. Lacerated wound 10 x 5 x 4 cm. involving front of (c)thigh, vertical, upper end at 25 cm. below ant. superior iliac spine and in middle of thigh.
15. Lacerated wound 16 x 5 x 6 cm. involving back of right thigh at just below margin of buttock and extends through outer aspect to front of thigh and ends at 5 cm. below injury (14).
16. Lacerated wound 3 x 1 x 0.5 cm. involving top of right shoulder.
17. Lacerated wound 7 x 4 x 2 cm. involving outer aspect of (r) upper arm, upper end at 20 cm. below top of shoulder.
18. Lacerated wound 14 x 4 x bone deep, crescent shaped, involving back of(r) fore arm, upper end at 7 cm. below elbow joint.
19. LW 8 x 4 cm x bone deep, vertical, involving outer (r) fore arm, upper end at 7 cm. below elbow joint.
20. Lacerated wound 7 x 2 x 0.5 cm. involving front of (c)fore arm, upper end at 2 cm. below injury (19).
21. Multiple lacerated wounds 1 x 1 x 0.5 cm. - 3 x 2 x 1 cm involving proximal and middle phalanges, palmar aspects, of (r) hand.
22. LW 3 x 1 x 0.5 cm. involving back of wrist joint.
23. Lacerated wound 11 x 4 cm. vertical involving (L) hand, the wound perforates through entire thickness of (L) hand, dividing vertically the hand into 2 parts, one portion containing 3 fingers and other 2 fingers.
24. Two lacerated wounds upper 4 x 3 x 0.5 cm., lower 9 x 4 x 3 cm. at 4 cm. apart, involving (L) upper arm front and outer aspects, upper one at top of shoulder.
25. Lacerated wound 5 x 1 cm. x bone deep, horizontal, involving back of (L) elbow joint.
26. Lacerated wound 9 x 2 x 4 cm. involving front of (r) thigh horizontal lower end at 5 cm. above knee joint.

27. Two lacerated wounds, upper 6 x 2 cm. x bone deep, lower 8 x 2 cm x bone deep at 2 cm. apart, involving back and outer aspects of(r) leg, upper end of upper one at 12 cm. below knee joint.

28. Lacerated wound 10x3 cm. x bone deep, horizontal, involving back of (L) thigh, lower end at 2 cm. above knee.

29. Lacerated wound 5 x 2 cm. x bone deep, oblique, involving front of (L) leg, upper end at 2 cm. below knee. All lacerated wounds showed sharp margins and tapering ends, and all wounds appear like incised wounds.

Internal:

1. Entire scalp contused.

2. Thin subdural and subarachnoid haemorrhages involving entire cerebrum and cerebellum.

(the post-mortem certificate is written by hand in four pages in very small handwriting which is hardly legible).

8. The opinion as to cause of death is stated in Ext. P3 thus: "Deceased died due to multiple injuries sustained".

9. The Court below relied on the evidence of PW 1 to PW 3 and held that their evidence is acceptable and trustworthy. There is no reason why the evidence of PW 1 to PW 3 should not be relied on. PW 3 is the daughter of the deceased. She narrated the incident, which would show that the murder was committed by none other than the accused. She also identified MO 1 chisel and MO 2 to MO 4, the dress worn by the deceased as well as the accused which were blood stained. The evidence of PW 1 to PW 3 would clearly indicate that no other person had entered into the house at any time before the incident. These witnesses saw the accused with MO 1 chisel immediately after the murder and blood was dropping out from the chisel. The incident happened at 9.15 p.m. and the inmates of the house had gone to bed. The children of the accused woke up on hearing the quarrel between the deceased and the accused. Though the deceased came out of the bed room and entered the Poomugham, the accused pulled her forcibly into the bed room and inflicted the injuries after closing the door. The inmates of the house could not rescue the deceased.

10. In the statement u/s 313 of the Code of Criminal Procedure, the accused stated that on the date of incident, he went to the shop by about 4 p.m. and came back only by about 9.30 p.m. He called his wife, but she did not open the door. Therefore, the accused called the children and they woke up. Since the wife of the accused did not open the door, the accused broke open the door and he saw his wife lying dead in a pool of blood with several injuries. The accused and his children cried aloud and the neighbours came to the house.

11. From Ext. P4 plan prepared by PW 6, the Village Officer, and the photograph of the house in Ext. P5 series photographs, it is clear that the entry to the house

of the accused is to the room at the front side (Poomughamuri). There is an idanazhi entering from the front room and there is another door there to enter into the idanazhi. From the idanazhi, entry is possible to two rooms, one on the eastern side and one on the western side. The incident took place in the eastern room. There is a door on the side of the kitchen at the rear side of the house. If the statement of the accused u/s 313 of the Code of Criminal Procedure is true, the assailant must be either one of the inmates in the house or somebody who had intruded into the house and escaped from the house. There is no case for the accused that any door of the house was lying open or the roof tiles of the house were removed, so that the assailant could have entry and exit. The inmates of the house were the three children of the accused, the mother of the accused and the children of the brother of the accused. The accused have no case that any of them have committed the murder. The explanation offered by the accused is totally unreliable and unbelievable.

12. The learned counsel for the appellant in CrI. Appeal No. 90 of 2011 submitted that the questions put to the accused u/s 313 of the Code of Criminal Procedure were complex questions which could not be answered by an ordinary person and this has caused prejudice to the accused. The learned counsel relied on the decision in *Ajay Singh Vs. State of Maharashtra*, wherein the Supreme Court held that the object of Section 313 Cr.P.C. is to afford the accused a fair and proper opportunity of explaining the circumstances which appear against him. The questions must be fair and must be couched in a form which even an ignorant or illiterate person will be able to appreciate and understand. It was also held that a conviction based on the failure of the accused to explain what he was never asked to explain is bad in law. The attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims. The Supreme Court also held thus:

13. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questioning must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

13. The learned Public Prosecutor submitted that the questions, though complex, were clear and anybody could understand the same. He invited our attention to the answers given by the accused to the questions. The accused answered either "not correct" or "I do not know". A separate written statement was filed by the accused u/s 313 of the Code of Criminal Procedure in which he put forward a

case which we have narrated above. The learned Public Prosecutor submitted that the case of the accused is akin to alibi which he has to prove. The accused failed to prove the same. Not only that, the case put forward by the accused, on the face of it, is improbable, impossible and unbelievable.

14. The learned Public Prosecutor relied on the decision of the Supreme Court in Ramnaresh and Others Vs. State of Chhattisgarh, wherein, the Supreme Court held thus:

49. In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court. The accused may choose to maintain silence or complete denial even when his statement u/s 313 Cr.P.C. is being recorded, of course, the Court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law.

50. Right to fair trial, presumption of innocence unless proven guilty and proof by the prosecution of its case beyond any reasonable doubt are the fundamentals of our criminal jurisprudence. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in relation to any of these protections substantially. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused.

51. One of the other cardinal principles of criminal justice administration is that the Courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. (Ref. Rafiq Ahmad v. State of U.P.)

52. It is a settled principle of law that the obligation to put material evidence to the accused u/s 313 Cr.P.C. is upon the Court. One of the main objects of recording of a statement under this provision of Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made u/s 313 Cr.P.C., insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.

53. In the present case, the accused have denied their presence on the spot, at the time of occurrence. Thus, it was for them to prove that they were not present at the place of occurrence and were entitled to the plea of alibi. In our considered opinion, they have miserably failed to establish this fact.

15. On a consideration of the various questions put to the accused u/s 313 Cr.P.C., the answers given to those questions by the accused and the specific defence set up by him in the written statement u/s 313 Cr.P.C., we are of the view that no prejudice was caused to the accused by putting some what complex questions to him.

16. The prosecution has established that the accused had committed the offence. The Court below was right in holding that the accused is guilty u/s 302 of the Indian Penal Code. On a re-appraisal of the evidence in the case, we confirm the conviction of the accused u/s 302 of the Indian Penal Code.

17. The Court below awarded a sentence of death to the accused. It was held that the case comes under the category of rarest of rare cases, the act of the accused being gruesome and brutal. Applying to the facts of the present case, the tests laid down by the Supreme Court in *Bachan Singh Vs. State of Punjab*, *Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka*, *Machhi Singh and Others Vs. State of Punjab*, *Aloke Nath Dutta and Others Vs. State of West Bengal*, *Mohinder Singh Vs. State of Punjab*, and *Ramnaresh and Others Vs. State of Chhattisgarh*, we are of the view that this is not a fit case where capital punishment should be provided. In *Mohinder Singh Vs. State of Punjab*, it was held thus:

In a way, every murder is brutal, and the difference between the one from the other may be on account of mitigating or aggravating features surrounding the murder. The doctrine of "rarest of rare" confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of "rarest of rare" and secondly, when the alternative option is unquestionably foreclosed.

The "rarest of rare" case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. Life sentence is the rule and the death penalty is the exception. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable. The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.

It is well settled that life imprisonment is the rule and death sentence is an exception. There is nothing on record to indicate that the accused/appellant was having any criminal record nor can it be said that he will be a grave danger to the society at large. It is true that his act was heinous. At the same time, it cannot be said that the case comes under the category of rarest of rare cases where the accused requires to be eliminated from the society. The accused has three children and they need the care and protection of their father. It cannot be assumed that if capital punishment is not provided, there would be any chance of the accused indulging in similar crimes. On an over all consideration of the facts and circumstances of the case, we are of the view that in the present case, sentence of life imprisonment would be adequate enough to meet the ends of

justice. For the aforesaid reasons, we dispose of the DSR and the Criminal Appeal as follows:

1. The Death Sentence Reference is answered in the negative and against the prosecution.
2. The Criminal Appeal is allowed in part and while confirming the conviction, the sentence of capital punishment is set aside.
3. We sentence the accused to undergo imprisonment for life.
4. The appellant/accused would be entitled to the set off admissible to him u/s 428 of the Code of Criminal Procedure.