Kodavandi Moidean Alias Baputty vs The State Of Kerala on 19 December, 1972

Equivalent citations: AIR1973SC467, 1973CRILJ671, (1973)3SCC469, AIR 1973 SUPREME COURT 467, 1973 3 SCC 469, 1973 MADLJ(CRI) 370, 1973 2 SCJ 144, 1973 SCC(CRI) 369, 1973 SCD 69, (1973) 1 SCC 533

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Bench: A. Alagiriswami

JUDGMENT

1. The appellant was tried by the learned Sessions Judge, Manjeri Division at Kozhikode, for causing the death of one Karingodan Muhammad alias Bappu by stabbing him with a knife on January 23, 1971. He was found guilty and convicted under Section 302, Indian Penal Code, and sentenced to undergo imprisonment for life. The appellant challenged this conviction and sentence before the Kerala High Court in Criminal Appeal No. 206 of 1971. The State tiled criminal Revision Petition. No. 380 of 1971 for enhancement of the sentence. The High Court by its judgment and order dated 12-10-1971 confirmed the appellant's conviction. Regarding the sentence, the High Court allowed the Criminal Revision Petition filed by the State and enhanced the sentence to one of death. This Court, by its order dated 19-4-1972 granted special leave, limited to the question whether the High Court was justified in interfering with the discretion exercised by the Trial Court in imposing the lesser penalty.

2. As the only question is regarding the enhancement of the sentence, we have examined the judgment of the High Court under appeal in order to discover the special reasons, which induced the learned Judges to differ from the opinion of the Trial Court about the appropriate sentence to be imposed upon the appellant. According to the prosecution, when Bappu, in the company of P. W. 1. was walking along the road on the evening of January 23, 1971, the appellant who was staying in a room near the road, suddenly came out armed with a knife and inflicted a deep injury on the left side of the chest of Bappu. Bappu fell down and died on his way to the hospital. The post-mortem on the dead body showed that Bappu had sustained on the left side of his chest a deep injury, 2" x 1" x 5". The plea of the accused was one of complete denial. The evidence of P. Ws. 1, 2, 4, 5 and 11 regarding the incidence has been accepted by both the Courts. From the evidence of P. Ws. 5 and 6 it appeared that, earlier in the day, there was a quarrel between the deceased and the brother of the appellant, who were both working in certain transport services.

3. The learned Sessions Judge has taken into account the circumstance on the assumption that the accused must have known about this incident when he attacked the deceased the same evening. But it is not categorically found by the learned Sessions Judge that the appellant was aware of the quarrel that took place between the deceased and his brother. The learned Sessions Judge has found

that the weapon used by the appellant was a deadly one and that when he stabbed the deceased, the accused had the intention to cause the death of Bappu and that he had also the knowledge that the injury was sufficient to cause the death of a person. The further finding is that there was no cause for the appellant causing this injury on Bappu as a result of which the latter died.

4. When considering the question of sentence, the learned Sessions Judge holds that the evidence in the case establishes that the appellant fell upon the deceased when the latter was walking along the road. The Court further observes that the accused must have been in a disturbed state of mind when he attacked the deceased, as there was no evidence to show that there was any previous enmity between them. It is further stated by the Court that the appellant, being impulsive, must have attacked the deceased all of a sudden and that the possession of a dagger by the accused cannot be considered to be any evidence of pre-meditation and preplanning by him. On this reasoning, the Court held that the interest of justice would be served adequately by the lesser sentence being imposed.

5. The High Court, on the other hand, after agreeing with the findings regarding the guilt of the appellant, recorded by the Trial Court, does not agree that the lesser sentence in the circumstances would meet the ends of justice. It is a view of the High Court that certain important circumstances have been ignored by the learned sessions Judge when awarding the lesser sentence. According to the High Court, there was no justification for the appellant suddenly attacking the deceased, who was actually walking along the road unarmed. It is the further view of the High Court that there is nothing in the evidence to show that any quarrel took place between the appellant and the deceased or that any other unpleasant words were uttered by the deceased, so as to provoke the accused. On the other hand, the accused coming out of the house armed with a fairly big knife, on seeing the deceased and suddenly attacking him, clearly shows that the act of the appellant was deliberate and the stabbing of the deceased with a fairly big knife was brutal. The High Court has further taken into account the fact that the plea of the accused was one of total denial and that there was nothing in the cross-examination of the prosecution witnesses to show that there was any provocation offered by the deceased at the time when he was attacked. In view of these circumstances, the High Court is of the view that the sentence imposed by the Trial Judge was unduly lenient and manifestly inadequate and that failure to impose the death sentence has resulted in grave miscarriage of justice. On this reasoning, the High Court enhanced the sentence to one of death.

6. Mr. Bisaria, appearing as Amicus Curiae counsel, urged on behalf of the appellant that the interference by the High Court in the matter of sentence was not justified. Having considered the findings regarding the guilt of the appellant and the circumstances under which he stabbed the deceased, as also the reasons given by the two Courts regarding the sentence, we are not inclined to agree with the learned Counsel that in the particular circumstances of this case, the High Court was not justified in enhancing the sentence. It is no doubt true that the question of a sentence is a matter of discretion and when that discretion has been properly exercised along accepted judicial lines, an appellate Court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the |face of the judgment. If a substantial punishment has been given for the offence of which a person is found guilty, after taking due regard to all the relevant circumstances normally there should be no interference by an appellate Court. On the other hand,

interference will be justified when the sentence is manifestly inadequate or unduly lenient in the particular circumstances of a case. The interference will also be justified when the failure to impose a proper sentence may result in miscarriage of justice. See Bed Baj v. State of Uttar Pradesh and the recent judgment in Shiv Govind v. State of Madhya Pradesh .

7. Having due regard to the principles referred to above, we are of the view that the High Court in the case before us, has properly exercised its powers when it enhanced the sentence to one of death. We have already referred to the reasons given by the learned Sessions Judge for imposing the sentence of imprisonment for life as also the reasons given by the High Court for enhancing the sentence to one of death. The High Court has properly taken into account the various relevant circumstances, which have not been either adverted to by the Trial Court or properly appreciated. On the facts, it is established that the appellant suddenly, without any warning, attacked the deceased, who was unarmed and defenseless and caused a very fatal injury on the chest. From the nature of the injuries described in the postmortem certificate, it is also clear that the blow must have been inflicted by the appellant with considerable force. In these circumstances, the High Court was justified in characterising the act as brutal justifying the imposition of the death penalty. The appeal fails and is dismissed.