

Perumal Perumal Alias Thankachan

Vs

The State of Kerala

Criminal Appeal No. 239 of 1973

(H. R. Khanna, Y. V. Chandrachud JJ)

02.08.1974

ORDER

KHANNA, J.

1. Perumal Perumal alias Thankachan (41) was convicted by the learned Additional Sessions Judge Mavelikkara for an offence under Section 302, Indian Penal Code for causing the death of Varkey John alias Kunjukutta (42) and was sentenced to death. On appeal and reference the Kerala High Court affirmed the conviction and sentence awarded to the accused. The accused thereupon came up in appeal to this Court by special leave. The leave was, however, restricted to the question of sentence only.

2. The prosecution case is that the accused had collected money in his village for the construction of a bund. When the construction of the bund became no longer necessary, the accused returned the money to some of the persons from whom he had collected the same. Kunjukutty deceased had also paid money to the accused in that connection, but despite the demands made by Kunjukutty the accused did not return the money aid by Kunjukutty. As Kunjukutty had been making demands for the return of the money to the accused in public, the accused felt insulted. About a week before the present occurrence, a quarrel took place between the accused and Kunjukutty deceased on a public road. Others then intervened and separated the two. On December 5, 1971 at about 11 a.m., it is stated, Kunjukutty deceased was reading a newspaper in his house. Abraham Tampan (PW 2), a neighbour of Kunjukutty was also present with him at that time. Just then, the accused came there and called Kunjukutty. When Kunjukutty came out of the house followed by Abraham Tampan, the accused moved towards the house of Thankamma Abraham (PW 3), at a distance of about 200 meters from the house of Kunjukutty. Kunjukutty followed the accused to that place. The accused then turned towards Kunjukutty and asked him whether he would go away only after receiving the money. The deceased thereupon remarked as to why the accused was insulting him. An altercation then took place between the accused and Kunjukutty. The accused then caught hold of the kailee mundu of Kunjukutty. A scuffle followed between the two. During the course of that scuffle, the accused and Kunjukutty moved towards the bank of a nearby river. The accused then put his foot on the loose end of Kunjukutty's mundu as a result of which the mundu dropped on the ground. When Kunjukutty bent forward to pick it up the accused took out a dagger and stabbed Kunjukutty on his back. When Kunjukutty rose the accused stabbed him in the abdomen and in the clavicle as also on both the hands. Kunjukutty fell down and the accused ran away. Kunjukutty was thereafter taken in a canoe to Manner Public Health Centre. The doctor at the health centre gave first aid to Kunjukutty and directed that he be taken to Movelikkara Government Hospital for better treatment. The doctor in Mavelikkara hospital however, directed that Kunjukutty should be removed to Kottayam Medical College hospital. Kunjukutty died in the last named hospital at 10.15 p.m. the same day.

3. Report about the occurrence was lodged by John Jacob, member of Legislative Assembly. The accused was thereafter arrested and sent up for trial. At the trial the accused denied the prosecution allegations against him. The trial Court and the High Court accepted the prosecution allegations against the accused and accordingly convicted and sentenced him as above.

4. The only question with which we are concerned, as already mentioned earlier, is whether the sentence of death awarded to the accused should or should not be converted into one for imprisonment for life. We have set out the allegations which have been found to have been substantiated at the trial of the accused. Those allegations reveal that the accused after arming himself, with a dagger called kunjukutty from his house. The accused then made a provocative remark to Kunjukutty as to whether he would go away only after receiving the money. When the deceased protested against that remark there was, as one would normally expect, an altercation. The accused then caught hold of the mundu of Kunjukutty which led to a scuffle. During the course of the scuffle, the accused put his foot on the cloth of Kunjukutty and when the deceased bent to pick it up, the accused stabbed him at the back and thereafter on other parts of the body. The facts established against the accused show that the attack on the deceased was premeditated and was not made under some sudden impulse. As many as five stab injuries were caused to the deceased. Looking to all the circumstances, we see no sufficient ground to interfere with the sentence awarded to the accused. The appeal fails and is dismissed.

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