

R. Rajender Nair

Vs

State of Kerala

(M. K. Mukerjee, K. T. Thomas JJ)

14.10.1997

JUDGEMENT

MUKHERJEE, J.

1. Rajendran Nair, the appellant before us, along with his brother-in-law Krishnan Nair was placed on trial before an Additional Sessions Judge of Thiruvanthapuram to answer charges under Section 302 and 201 I.P.C. and Section 302/34 and 201/34 I.P.C. respectively. The trial Court convicted them of both the offences and aggrieved thereby they preferred an appeal in the High Court. While acquitting Krishnan Nair, the High Court upheld the convictions of the appellant. Hence this appeal at his instance.

2. The appellant married Lalithambika (the deceased) on October 26, 1984 and a daughter Remya was born to them on August 13, 1985. They used to reside in a small house on the northern side of Kozhiyodu Lane within the limits of the Thiruvananthapuram Corporation. Krishnan Nair and the parents of the appellant lived in separate houses nearby.

(a) According to the prosecution case on November 16, 1989 around 8.00 P.M. the appellant slapped the deceased on her cheek and when she sat down on the floor he kicked on her chest, as a result of which she became unconscious. The appellant then went to the house of his parents with his daughter and leaving her behind came back to his house with Krishnan Nair. With his assistance he took his wife to the kitchen and suspended her from the rafter on the ceiling using her saree as the ligature. Thereafter they closed the door and went out only to return a little later. Reaching the house they gave an impression that the door was locked from inside and, accordingly, broke it open. They then, brought the deceased down after untying the saree by which she was hanging and laid her on a cot. Then the appellant along with his mother and brother Prem Kumar (P.W.9) took the deceased to the General Hospital where Dr. Sharaffuddin (P.W.14) examined her and declared her dead.

(b) An information about the death of Lalithambika was sent to his brother Prabhakaran (P.W.1) in that night. He became suspicious as to the manner of the death of his sister as he was told that she was electrocuted. P.W.1 passed on the information to his sister Rajeshwari Amma (P.W.2) at the Thirumala and then went to the house of the appellant. On the following morning he lodged a report at the Vanchiyoor police station where a case of suspicious death was registered. Shri S. Sasikumaran Nair (P.W.15), Additional District Magistrate of Thiruvananthapuram held inquest upon the dead body and thereafter sent it to Forensic Medicine Department of the local Medical College for conducting autopsy. Dr. Sreekumari (P.W.16), an Assistant Professor of Forensic Medicine, held autopsy upon the dead body and submitted her report. Later on the investigation was taken over by C.I.D. and on completion thereof charge-sheet was submitted.

4. The appellant pleaded not guilty to the charges and his defence was that his wife was not on cordial terms with her family as she wanted to dispose of her share in their ancestral property to which objection was raised by her brother Prabhakaran (P.W.1) and sister Rajeswari Amma (P.W.2). Because of the strained relationship with members of her family she was undergoing great mental tension even though she had a happy conjugal life. It was the further defence of the appellant that on the date of the incident when he returned from the office in the afternoon he found her crying and on enquiry she disclosed that it was the Pulakuli day of her aunt. He then pacified her and took her to the temple. After returning home around 7.45 P.M. when he was watching television Remaya said that she was feeling hungry. He then took her to his parents house as food was not readily available in his house. After feeding her when he came back home he found the door closed and light switched off. He knocked the door violently but did not get any response from his wife. With the help of neighbours when he broke open he found his wife hanging from the rafter of the kitchen. By untying the saree he brought her down and laid on a cot.

5. In absence of any eye-witness to the incident, the prosecution rested its case upon circumstantial evidence. At the outset we may mention that P.W.16, who held the post-mortem examination, testified that he could not definitely say as to whether the death was suicidal, homicidal or accidental. In view of the above opinion of the doctor the prosecution relied upon the following circumstances to hold the appellant guilty of the charges leveled against him:

- i. the relation between the appellant and his wife was not very cordial and in the morning of the fateful day they had a quarrel;
- ii. Around 8.00 P.M. the appellant slapped his wife on her face and kicked on her chest as a result of which she became unconscious;
- iii. Immediately thereafter the appellant along with his daughter went to his parents' house but returned alone;
- iv. Between 8.15 and 8.30 P.M. the hanging took place inside the house of the appellant and at that time there was none except the appellant;
- v. By the time the relatives of the appellant and neighbors reached the house the body has been brought down from the suspended position and laid on a cot;
- vi. A story of electrocution was attempted to be spread and.
- vii. Neither the appellant nor any member of his family attended the funeral of the deceased.

6. Both the trial Court and the appellate Court held that each of the above circumstances stood conclusively proved and as, according to them, those circumstances considered cumulatively unerringly pointed to the guilt of the appellant recorded their respective findings against him.

7. Having carefully gone through the impugned judgment in the light of the evidence on record, we are unable to sustain the impugned order of conviction and sentence notwithstanding the concurrent findings of the Courts below. In our considered view the most incriminating circumstance alleged against the appellant was that when the hanging took place the appellant was in his house and that nobody else was there. We searched in vain for the evidence in support thereof but found not an iota of it. The evidence on record only indicates that after assaulting the deceased as a result of which she became unconscious appellant left the house along with his daughter at 8.00 P.M. and came back home sometime later. While according to the prosecution the appellant came at a point of time when his wife was still alive, his version, as noticed earlier, was that when he came back he found her hanging. His further version was that he untied the knot of the saree which she used as the ligature and brought her down. In absence of any evidence to prove that the deceased was alive when the

appellant came back his version cannot be rejected altogether. For an individual to hang a living person (who would certainly make all possible efforts to extricate himself) after lifting him to a certain height seems to be rather improbable. Presumably, in that context, the prosecution sought to prove that the appellant took the assistance of Krishnan Nair to accomplish his evil design. But consequent upon his acquittal, the High Court was not justified in convicting the appellant with a finding that he alone hanged her in a manner alleged by the prosecution. In arriving at the above finding the High Court however took of the fact that the deceased had become unconscious owing to earlier assault by the appellant and observed that it was not physically impossible for him to hang her. This reasoning of the High Court cannot also be supported for the nature of assault could have only resulted in a momentary stupor. In absence of any evidence that the deceased continued to remain unconscious till she was allegedly strangled we are unable to accept the prosecution story of hanging. As regards the story of electrocution falsely circulated by the appellant, we also find that there is no evidence. The other circumstances mentioned above do not, in our opinion, unmistakably point towards the guilt of the appellant.

8. For the foregoing discussion we allow this appeal, set aside the convictions and sentences of the appellant and acquit him of both the charges. The appellant, who is in jail, be released forthwith.