KERALA HIGH COURT

Mathammal Saraswathi

Vs.

State of Kerala

Criminal Appeal No. 120 of 1956, Quilon in SC No. 34 of 1956

(Koshi, C.J. and Varadaraja Iyengar, J.)

28.02.1957

JUDGMENT

Koshi, C.J.

1. The appellant has been convicted by learned Addl. Sessions Judge of Quilon for three distinct offences of murder under Section 302 I. P. C. and for attempting to commit suicide, punishable under Section 309 I. P. C. For each offence of murder she has been sentenced to undergo imprisonment for life and for that under Section 309 to undergo simple imprisonment for one year with the direction that all the four sentences shall run concurrently. The case against the appellant was that she caused the death of three of her children one aged 7, the second aged 5 and the third aged one by throwing them into a well and that afterwards she herself jumped into it with a view to commit suicide. She was, however, rescued by passers-by who heard her cries from the well, but by the time the bodies of the children were recovered the children were all dead. The learned Additional Sessions Judge found her guilty on all the four counts in the charge, convicted and sentenced her as stated above. The appeal is against these convictions and sentences.

2. The occurrence took place on 14-4-1956 in Kulasekharapuram Shencottah now part of the Madras State. The lower court pronounced its judgment on 7-6-1956 and the appeal was registered in the Travencore-Cochin High Court on 18-10-1956. In the normal course the case should have been certified under Section 66 (2) of the States Reorganisation Act, 1956 (Central Act 37 of 1956) to be transferred to the High Court of Madras, but by oversight that was not done. When the appeal came up before us a doubt was raised whether it was competent for us to hear and dispose of the same. Section 60 (6) of the States Reorganisation Act provided inter alia that all proceedings pending in the High Court of Travencore-Cochin immediately before the appointed day other than those certified by the Chief Justice of that High Court under Sub-section (2) of Section 66 shall stand transferred to the High Court of Kerala. Under Sub-section

(2) of Section 66 it was not incumbent On the Chief Justice of Travencore-Cochin to certify for transfer to the Madras High Court all cases pending immediately before the appointed day in the Travencore-Cochin High Court which arose from the territories transferred to Madras from Travencore-Cochin. In view of these provisions it is unnecessary for us to examine whether by reason of the transfer of the venue of the crime to the Madras State we have under rules of Private International Law ceased to have jurisdiction to hear and dispose of the appeal. The appellant is undergoing her sentence in the Central Prison, Trivandrum and as per the prayer made in her memorandum of appeal she was brought up before this Court at the hearing and besides hearing the counsel retained at the State's expense to defend her, we heard her as well.

3. There is no direct evidence to connect the accused with any one of the offences she stood charged with. At the same time, there is overwhelming evidence to establish the appellant's complicity in the three murders she has been found guilty of and also to prove that she attempted to commit suicide by jumping into a well known as Saivapillamar's well. (After discussing the evidence, judgment proceeded :) We have carefully considered these different items of evidence and we have found ourselves to be in entire agreement with the lower court's conclusion that the appellant caused the death of her children by deliberately throwing them into the well and that afterwards she herself jumped into it with a view to end her life. No doubt she had found life impossible in her husband's house. All the same she had no justification whatever to end the lives of the three innocent children whom she had herself brought forth into the world. Indeed Mr. Raya Shenoi who appeared on her behalf found the evidence to be overwhelming to admit any argument being raised against the conviction on any one of the four counts. In all the circumstances of the case we have therefore to confirm the convictions entered against the appellant by the court below. As only the lesser penalty prescribed for murder has been imposed in respect of each murder, no question of interfering with those sentences either arises. The sentence of 1 year's simple imprisonment passed for the attempt to commit suicide is to run concurrently with the other sentences and we therefore leave that also undisturbed. In passing the sentences for the three murders the lower court has not chosen to say whether the imprisonment the appellant is to undergo should be simple or rigorous. Section 302 as amended by the Schedule to the Code of Criminal Procedure (Amendment) Act, 1955 (Central Act 26 of 1955) only states that the alternative punishment for murder shall be 'imprisonment for life' and not rigorous imprisonment for life or simple imprisonment for life. The court passing the sentence has, however, to keep in view the provisions of Section 60 of the Penal Code and choose one or the other form in view of all the circumstances. Recently we had another instance where the Sessions Judge had failed to specify whether imprisonment for life awarded by him was rigorous or simple. In that case the Inspector Gentral of Prisons had sought our direction as to what description of imprisonment the prisoner should be made to undergo. Here we clarify the position by stating that the imprisonment for life in this cases shall be simple imprisonment and not rigorous.

4. Counsel for the appellant invited our attention to the provision of Section 401, Criminal

Procedure Code and certain decisions thereunder where courts made recommendations for remission of sentences in part. The court is concerned only with the passing of the sentence; to carry it into effect is the function of the executive Government. It is up to them to decide whether they should invoke their powers in this case. It is in consideration of the desperate and helpless state the appellant found herself that the lower court imposed the lesser penalty prescribed by law for murder and inasmuch as we did not find the appellant to be of an abnormal or weak mind we do not feel justified in making a recommendation for remission. At the time of the occurrence the appellant was pregnant and her new born baby was in her arms when she appeared before this Court. Whether these circumstances should serve as ground for remission of sentence is entirely within the discretion of the Government.

5. Confirming the convictions and sentences passed by the lower court we dismiss the appeal.

Appeal dismissed.