

KERALA HIGH COURT

Kesavan

Vs.

State of Kerala

Crl. Appeal No. 34 of 1957 and S.C. 78 of 1956

(Sankaran and Raman Nayar, JJ.)

02.09.1957

JUDGMENT

Raman Nayar, J.

1. The appellant, a youth of 19, has been sentenced to imprisonment for life for the murder of his father.

2. The deceased Raman was a settler in Wynad from the Taluk of Valuvanad. Living with him were-he was apparently a widower, his two sons, the accused and a little boy named Gopi, his two daughters Pws. 1 and 2 aged 17 and 12 respectively, and the accused's newly wedded wife Pw. 3, a girl of 15. It would appear from the evidence of these witnesses, as also from Ext. P. 6, a confessional statement made by the accused, and Ext P.17, his statement in the committing magistrate's court, that ever since the accuser's marriage to which the deceased was opposed, and which took place about seven months before the deceased death the deceased was bullying accused and his wife. He was incessantly abusing them, he was denying them clothes and other necessities of life, and often he used to beat the accused on some pretext or other. (There is a suggestion in Ext. P. 6, and in the evidence of Pw. 2 in cross-examination that the deceased animosity was partly due to the fact that Pw. 3 was resisting his improper overtures, and Ext. P.6 speaks of one such incident on the very day of the occurrence. Pw. 3 his however denied that the deceased made any advances to her. About a month before the occurrence there was a theft of jewels in the house, and the deceased suspecting the accused was about to hand him over to the police, but desisted from doing so on the advice of the neighbors. At or about the same time the deceased heat the accused for having sold some paddy without his knowledge for the purpose of buying clothes for himself and his wife, and six days before the occurrence the deceased again beat the accused because Pw. 3 had disturbed his prayers by going past him wearing only a bodice.

3. At about lamp lighting time on 13-11-1956, the accused came home and told his father that there was a wild goat lying dead in the forest, and together they set out westwards to fetch the goat home. Pws. 1, 2 and 3 who were in the house saw them set out together, the accused carrying the chopper, M. O. 1, and Pw. 5 a cattle dealer who was coming to see the deceased on some business met and spoke to them a little distance to the west of their house. Then they went westwards saying that they were going for a dead wild goat. Some time later the accused returned home alone, and Pw.

5 who happened to be returning the same way saw him go home alone. By the time the accused reached home Pws. 1 and 3 had gone out for a bath and only Pw. 2 and Gopi were in the house. The accused had a wound on his right index finger Pw. 2 fetched some water as directed by him and with it he washed his wound as also the chopper, M. O. 1. Then he kept M. O. 1 inside the house. To Pw. 2 as well as to Pws. 1 and 3, who came back home a moment later, the accused said that the deceased had gone to the house of Pw. 11, another settler living about half a mile to the west of their house (Pw. 11's evidence shows that the deceased did not go there at all).

4. The deceased never returned, and when Pw 3's father Pw. 4 came seeking him on some business the next morning, the accused told him that the deceased had gone to Pw. 11's house the previous day. Pw. 4 went to Pw. 11's house and found that the deceased had not gone there. At about 10 he went again to the deceased house, and finding the deceased still absent, took the accused to task for not making any enquiries about his whereabouts. He sent the accused to look for the deceased in the latter's brother's house. and when the accused returned some time later saving that the deceased was not there. he and the accused and some of the neighbors set out in search of the deceased. At about 3.30 P.M.. they came upon the body of the deceased lying with the head rift, and all but severed from the trunk. in the forest about half a mile west of the house Pw. 4 straightaway went to the village headman, Pw. 12, who lives about 3V2 miles away and, made the report Ext. P1 at about 5-30 P.M. This report reached the police station at 6-30 P M.

5. From the time of the discovery of the body, the accused was not to be seen. At about 2 P.M. on 17-11-1956, he went to the house of Pw. 10 the leader of the local settlers, and told Pw. 10 that he had cut and killed the deceased because the deceased had been treating him and his wife very badly. He asked Pw. 10 to take him to the police and to help him, and Pw. 10 took him and horded him over to the Circle Inspector, Pw. 18, who arrested him at 3-30 P.M.

6. The accused was sent for remand the next day. On 24-11-1956, Pw. 9. the Sub 'magistrate, Kozhikode, had him brought up before her on receiving the requisition, Ext. P.5, from Pw. 18. She administered the accused the prescribed warnings and then sent him back to the sub-jail to give him time to reflect. Three days later she had him brought up before her again and, after repeating the warnings and after satisfying herself by questioning him that he was making a voluntary statement, she recorded from him the statement, Ext. P.6, in which he confessed that because of the bad way in which the deceased was treating him and his wife (of which he gave full details) he took the deceased to the forest that evening under the false pretext that there was a

wild goat lying dead there, and that he cut and killed the deceased with the chopper he was carrying and then went home after wiping the blood on the chopper with a cloth of the deceased.

7. Only Pws. 1 and 2 were examined in the committing magistrate's court. When questioned with reference to their evidence the accused affirmed all the incidents of ill-treatment spoken to by them, but with regard to the evidence that he had set out with the deceased for the forest that evening taking a chopper with him and that he came back alone and washed his hand which was cut and the chopper which was blood stained, he replied that he had nothing to say.

8. At the trial the accused denied that there was any ill-feeling between himself and the deceased, denied that he had gone out with the deceased to the forest that day or returned alone, or washed his wound or chopper. He denounced Pw. 10's evidence as false and stated that he was arrested and taken away by the police from the side of his father's body the next day. With regard to his confession, Ext. P.6, he said that he made that statement as advised by the police who told him that he would be acquitted since he was a boy.

9. The accused examined no witness in his defense.

10. None of the witnesses has any reason to speak falsely against the accused. Pws. 1 to 4 were questioned by the police at the inquest the morning after the body was discovered, and Pw. 10 was questioned immediately after he produced the accused before Pw. 18. The evidence of the magistrate, Pw. 9, goes to show that she took all precautions to ensure the voluntary nature of the confession, Ext. P.6, which she recorded and that she was satisfied that it was a voluntary confession. There is no reason to suspect that it was, as the accused now says inspired by the police.

11. In our view the learned Sessions Judge was right in accepting the evidence for the prosecution in its entirety. That evidence clearly establishes that the accused bore the deceased a grudge that he took the deceased on the evening of his disappearance to the forest on a false pretext, taking with him a chopper with which the injury suffered by the deceased could have been inflicted, that he returned alone with a cut wound on his finger, and that he proceeded to wash his wound and the chopper. (In view of the evidence that the chopper was washed it is not surprising that chemical examination was unable to discover any blood on it). It is also to be noted that in the committing magistrate's court the accused was not prepared to deny any of these facts. The evidence further shows that the accused falsely gave out that the deceased had gone to Pw. 11's house, and that he went into hiding as soon as the deceased body was discovered the next day. This evidence by itself is sufficient to establish the guilt of the accused, and the confession he made to Pw. 10 and to Pw. 9 (though retracted) put the matter beyond the shadow of doubt.

12. The accused has been rightly convicted of murder and he has been given the lesser of the two

sentences permissible under the law. We dismiss his appeal.

13. This case arises from the Malabar area where the Madras Borstal Schools Act (Act V of 1925) is in force, and the learned Sessions Judge has recommended to the State Government that the accused may be dealt with under S. 10A of that Act. Notice was issued to the accused to show cause why this recommendation should not be quashed, but we are of the opinion that the recommendation though embodied in the judgment is not a judicial order or sentence amenable to correction, if correction were necessary, at our hands sitting as a court of appeal or revision. Under S. 10A it is entirely for the State Government to decide whether an offender should be dealt with under that section or not, and the court has nothing to do with it. There is nothing in the Borstal Schools Act or, so far as we are aware in any other law, requiring, or even empowering, a court to make a recommendation of this nature to the State Government, and the recommendation, like recommendations of clemency that are often made in cases of infanticide, is, if we might call it so, a non-judicial report by the judge who, by reason of the fact that he has tried the case, and so knows all the circumstances is in a position to tender valuable advice in the matter. But it is purely an administrative act, and although the practice has grown of making such recommendations in the course of the judgment itself, there is nothing judicial about it. The position is no different than if the recommendation had been made by a separate letter instead of being embodied in the judgment. In the circumstances we do not feel called upon to say anything about the recommendation.

14. We might however observe that there appears to have been some confusion in the mind of the learned Sessions Judge between the provisions of S. 8 and S. 10A of the Madras Borstal Schools Act. This is apparent from his reference to the criminal tendencies exhibited by the accused as a ground for invoking the provisions of the Borstal Schools Act and also from his reference to the decision in the re K. Palani Moopar, A. I. K. 1952 Mad. 172, a case under S. 8 of the Act. S. 10A says nothing about criminal tendencies and is entirely independent of the provisions of S. 8. Under S. 10A as we have observed, it is solely for the State Government to act, and the court has nothing to do with it. Under S. 8 it is for the court to make an order of detention in a Borstal School, and criminal tendencies are grounds on which such detention can be ordered. By reason of the definition of adolescent offender in S. 2 (1) of the Act, S. 8 can never be applied to a person convicted of murder. S. 10A is the only section that can apply and that, of course only if the offender is awarded the lesser penalty of imprisonment for life. The learned Sessions Judge was not quite right in saying that Palani Moopar's case lays down "that even in murder cases it will be only proper to detain an accused in a Borstal School if the other conditions envisaged by that Act are present". What was actually said in that case was that S. 8 of the Act should ordinarily be applied to an adolescent offender "who, owing to lack of self-control or as a result of environment or association, is unable to control himself and commits an offence of either grievous hurt or homicide (an offence which, when it does not amount to murder, is punishable with imprisonment and therefore attracts S. 8) by using a deadly weapon without regard to the consequences for a pretty reason"; and if we may say so with great respect that case seems to us

to re-write S. 8.

15. We might also say that the apprehension expressed by the learned public Prosecutor that the result of a direction by the State Government under S. 10A would be that the accused would automatically be released on attaining the age of 23 appears to be unfounded. The limitation that detention cannot, in any case, extend beyond the date on which the offender attains the age of 23, is found only in S. 8, of which, as we have said, S. 10A is entirely independent. It finds no place in S. 10A. The last sentence in S. 10A has not the effect of attracting this limitation, for what it says is that the provisions of the Act shall apply to an offender whose detention is directed under that S. as if he had been originally sentenced to detention in a Borstal School, not that the provisions of the Act shall be applied in making the direction. All that apart, the section itself makes the position clear beyond doubt, for, it says that the offender is to be transferred to a Borstal School to serve the whole or any part of the unexpired residue of his sentence. All that a direction under S. 10A can accomplish is to ensure that the offender serves his sentence, either wholly or in part, in a Borstal School instead of in jail.

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