

## APPELLATE CRIMINAL.

*Before Mc Nair and Khundkar J.J.*

EMPEROR

v.

RAMA KOYA.\*

1939

July 11.

**Sentence**—*Transportation for life, when should be an alternative sentence for murder—Circumstances to be considered on the question of sentence—Code of Criminal Procedure (Act V of 1898), ss. 367, 374—Indian Penal Code (Act XLV of 1860), s. 302.*

The first wife of a tea garden cooly was unfaithful and left him. He had another wife, who behaved in a similar manner. She was taken back and forgiven, but she again ran away and refused to return to her husband, who murdered her in her lover's hut. The cooly was 25 years old, of humble origin and limited intelligence. He confessed his guilt and stated that the action of his wife had made it impossible for him to face his relatives.

*Held* that these were circumstances which the Court should take in consideration and which would justify it in passing the alternative sentence of transportation for life rather than the sentence of death.

Provocation, which is not sufficient to reduce an offence of murder to that of culpable homicide, may be taken into consideration, together with other circumstances, in passing the alternative sentence of transportation for life.

*Emperor v. Dukari Chandra Karmakar* (1) and *Mominaddi Sardar v. Emperor* (2) referred to.

### CRIMINAL REFERENCE.

The material facts of the case and the arguments in the Reference appear sufficiently from the judgments.

*Serajuddin Ahmad* for the accused.

*The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharyya,* for the Crown.

MCNAIR J. This case comes before us on a Reference by the learned Additional Sessions Judge of the Assam Valley Districts under the provisions of s. 374

\*Death Reference, No. 9 of 1939, made by I. P. Baruah, Additional Sessions Judge of Assam Valley Districts, dated June 16, 1939, and Criminal Appeal No. 338 of 1939.

of the Code of Criminal Procedure for confirmation of the sentence of death passed on the accused Rama Koya, who has been convicted under s. 302 of the Indian Penal Code of murder.

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The accused was a cooly employed in a tea garden in Assam. He came to the garden with his mother-in-law and two wives, Pakli and Pande, and they all lived together in the cooly lines. Another cooly named Chonoo was also living in the lines in a block next to the block occupied by the accused and his family. Shortly after the accused came to this garden, his wife Pande left him and went to live with another cooly as his wife. There was no disturbance when this took place and Pande and her paramour are living together in the garden. A couple of months later, on February 20, 1939, Chonoo and the accused's other wife Pakli disappeared together from the garden. They went to a neighbouring garden and were living as man and wife and working as coolies. They were brought back to the garden which they had left and were brought before the manager, who asked Pakli to return to her husband, the accused Rama Koya. She returned to him and Rama took her back, and they lived together for a short time. Chonoo in the meantime was transferred to cooly lines some two furlongs away from Rama's building. On March 21, Pakli again left Rama's house and went to the new house of Chonoo and stayed the night with him, the matter was reported and Chonoo and Pakli were brought before the manager and Pakli was once more told to go back to her husband. When they were being interrogated by the manager, Chonoo said that Pakli had voluntarily come to his house on the previous night and it is also in evidence that Pakli showed reluctance to return to Rama and said that she would prefer to live with Chonoo. Upon that the accused became angry and in an angry tone stated that he did not want the woman back, but Chonoo must pay him Rs. 80, which Chonoo agreed to do, provided he was

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so directed by the *panchâyet*. Pakli then accompanied Chonoo to his line. The accused went back to his hut, but at 2 o'clock on the same day he went to Chonoo's hut, where Pakli was alone, and murdered her by cutting her head with a *dáo*. The *chaukidár* heard the cry of distress of the woman but was afraid to interfere and went off to report. The accused then absconded but was eventually found working in another tea garden. He was arrested and brought to trial.

The accused has made a confession from which he has not resiled. He has stated that he had two wives and that one after the other they had been enticed away. He speaks of taking his wife back when she had gone with Chonoo and says that she remained with him for eight days and then fled away again in his absence. He admits that he stated that he did not want his wife back, but he would take money for her. Chonoo said that he had no money to pay and Rama went back home silently. His statement continues:—

I was very wounded at heart. My two wives were taken away. With what face could I say this to my parents, brothers and sisters. On that day I went to Chonoo's house silently. I did not find Chonoo at home. I found my wife. Then without uttering a word I cut her with this *dáo*.

The accused has been tried with the aid of a jury, who came to an unanimous verdict that he was guilty. The learned Sessions Judge agreed with that verdict and he stated, while passing the sentence:—

The murder was of most brutal character and there is not an *iota* of extenuating circumstances. The accused acted entirely under the predominating impulse of malice and vengeance. At the time when the crime was committed, the accused could not have any reason for provocation at all.

It is with the utmost reluctance that I disagree with the opinion of the Additional Sessions Judge that there is not an *iota* of extenuating circumstances. We have considered this case very carefully and we are of opinion that there are in this case such extenuating circumstances as justify the Court in passing a sentence of transportation for life rather than the alternative sentence of death. As was said

by S. K. Ghose J. in the case of *Emperor v. Dukari Chandra Karmakar* (1):—

The Indian Penal Code simply provides alternative punishments and there is nothing which takes away from the Court the duty to see that in a particular case the punishment fits the crime. . . . Therefore in fixing the measure of punishment one is to be guided not by s. 367 of the Criminal Procedure Code, but by various other matters, for instance, the enormity or otherwise of the offence, and the particular circumstances under which the accused committed it. They all go back to the facts of the case. But in the case of the death penalty the Courts have gone so far as to consider matters which are not relevant to the crime, e.g., mere delay in passing judgment—a circumstance bringing into play humanitarian grounds.

In this case, this particular coolie had an unblemished record. He was of humble origin and of limited intelligence. He was only 25 years old and there is no doubt from the evidence that his domestic life has been extremely trying and most unhappy. When his first wife left him, the evidence is that he continued to work as previously. His second wife Pakli leaves him. He takes her back. She again leaves him and goes to her paramour. They were once more brought up before the garden manager. She states that she is unwilling to go back to her husband and that she prefers to live with her paramour. It is only then, according to the evidence, that the accused became angry and said that he did not want her back but that her paramour should pay him Rs. 80. The accused has made no attempt to deny the charge. He has confessed and he has explained his reasons and it is apparent from his explanation that when he got back from the interview with the manager and considered the shame, that had been brought upon him by Pakli, that he felt that he could not face his parents, his brothers and his sisters. No doubt he would find it difficult also to face public opinion apart from his relatives. His character throughout has been exemplary and the evidence is that, even after his wife eloped with Chonoo, he continued to work in the garden as before. These circumstances all appear to me to be circumstances which the Court should take into consideration and which, in my opinion, justify the Court

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in passing the alternative sentence of transportation for life rather than the extreme penalty of death. The conviction of the accused is upheld and the sentence passed on him is reduced to one of transportation for life.

The Reference, which was for the confirmation of death, is thus rejected and the appeal which was for a lesser punishment is allowed.

KHUNDKAR J. I agree, and desire only to add that upon the question of sentence the view taken by my learned brother and myself is fortified by a decision of this Court in the case of *Mominaddi Sardar v. Emperor* (1). In dealing with the question of sentence in that case Patterson J. made the following observation :—

The accused clearly had some provocation, although that provocation was not such as could operate to take the offence out of the section, that is to say, to convert the offence from one of murder to one of culpable homicide not amounting to murder. At the same time, the fact that the accused did commit the murder under the influence of such provocation is one to which great weight ought to be attached in considering the question of sentence. The accused is a young man of 22 or 23, and considering his age and the class to which he belongs, it may well be that the sudden fury caused by his brother's insults was such as to banish from his mind every idea except the idea of revenge.

As pointed out above by my learned brother, the accused is a man of 25 years. His conduct in the past was above reproach and he showed a great deal of forbearance in the way he behaved after both his wives had left him. He took his second wife back when she returned to him without question, and there is no evidence at all that he ill-treated her in any way. He is a tea garden cooly and is a man of no education and low mentality. In all the circumstances, to which reference has been made in the judgment delivered by my learned brother, I am clearly of the opinion that the ends of justice will be served by imposing the alternative sentence of transportation for life instead of the capital penalty.

*Sentence commuted to transportation for life.*

A. C. R. C.