A

MUNIAPPAN

v.

STATE OF TAMIL NADU

March 18, 1981

B

[Y.V. CHANDRACHUD, C.J. AND A.P. SEN, J.]

CRIMINAL PROCEDURE CODE 1973

(1) S. 235(2)—Hearing accused on sentence—Formal question to accused as to what he has to say—Statutory obligation whether discharged—Necessity and object of section explained.

C

(2) S. 354(3)—'Special reasons' for awarding death sentence—Sessions Judge characterising murder 'terrific double murder' and awarding death sentence—Whether legal and valid.

PRACTICE AND PROCEDURE

(1) Advocates appearing in case—Conduct of—High Court to make only D *guarded observations.*

(2) Police Officers—Conduct of—Criticism by High Court—Prior opportunity to explain—Necessity of.

The Code of Criminal Procedure, 1973 by section 354(3) provides that when E the conviction is for an offence punishable with death, the judgment shall in the case of sentence of death state 'special reasons' for such sentence.

The appellant was charged under section 302 of the Penal Code for having committed the murder of his maternal uncle and his son.

The Sessions Judge convicted the appellant for murder and being of the opinion that it was "a terrific double murder" sentenced the appellant to death, F

The High Court condemned the murders as "cold blooded" and confirmed the conviction and sentence.

Allowing the appeal to this Court, limited to the question of sentence,

HELD : 1. The sentence of death imposed on the appellant is set aside G and he is sentenced to imprisonment for life. [275 F]

2. The reasons given by the Sessions Judge for imposing the death sentence are not 'special reasons' within the meaning of section 354(3) of the Criminal Procedure Code. It is not certain if he were cognizant of his high responsibility under that provision, that he would have imposed the death sentence. [275 E] H

3. It is not understood what is meant by "a terrific murder" as suggested by the Sessions Judge. All murders are terrific and if the fact of the murder being

terrific is an adequate reason for imposing the death sentence then every murder shall have to be visited with that sentence. Death sentence will then become the rule, not an exception and section 354(3) would become a dead letter. [272 F-G] A

4(i). On the question of sentence it is not merely the accused but the whole society which has a stake. [273 B]

(ii) After the conviction is recorded, the occasion to apply the provisions of section 235(2) of the Criminal Procedure Code arises. The obligation under this section to hear the accused on the question of sentence is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of the criminal. It is the bounden duty of the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view. Questions which the Judge can put to the accused under section 235(2) and the answers which the accused makes are beyond the narrow constraints of the Evidence Act. The Court, while on the question of sentence, is in an altogether different domain in which facts and factors of an entirely different order operate. [273 B; 272 H-273 A; 273 C] B C D

In the instant case, the Sessions Judge complied with the form and letter of the obligation which section 235(2) imposes, forgetting the spirit and substance of that obligation. [273 D]

5. It is not possible to appreciate how, after being shot in the chest and receiving the injuries described in the post-mortem report, the deceased could have survived for a couple of hours thereafter. There is also no explanation as to why the F.I.R. was not recorded at the Police Station when P.W. 1 went there. It is therefore unsafe to confirm the sentence of death imposed upon the appellant. [273 H. 274 F, 275 E] E

6. It is not the normal function of the High Court to pass judgment on the conduct of lawyers who appear before the lower courts. [275 C] F

7. The High Court should have given an opportunity to the two police officers to explain their conduct before making criticism on it. [274 G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 221 of 1981. G

Appeal by Special Leave from the Judgment and Order dated 23.10.1979 of the Madras High Court in Criminal Appeal No. 759/79 (Referred Trial No. 9/79).

A.T.M. Sampath and *P.N. Ramalingam* for the Appellant. H

A.V. Rangam for the Respondent.

The Judgment of the Court was delivered by,

CHANDRACHUD C. J. The appellant, Muniappan, was convicted by the learned Sessions Judge, Dharmapuri under section 302 of the Penal Code and sentenced to death on the charge that he had committed the murder of his mother's brother also called Muniappan and his son Chinnaswamy. The conviction for murder and the sentence of death having been confirmed by the High Court of Madras by a Judgment dated October 23, 1979, this appeal has been filed by the accused by special leave. The leave is limited to the question of sentence.

The judgments of the High Court and the Sessions Court, in so far as the sentence is concerned, leave much to be desired. In the first place, the Sessions Court overlooked the provision, contained in section 354(3) of the Code of Criminal Procedure, 1973, which provides, in so far as is relevant, that when the conviction is for an offence punishable with death, the judgment shall in the case of sentence of death state special reasons for such sentence. The learned Sessions Judge, in a very brief paragraph consisting of two sentences, has this to say on the question of sentence :

> "When the accused was asked on the question of sentence, he did not say anything. The accused has committed terrific double murder and so no sympathy can be shown to him."

The judgment of the Sessions Judge is in Tamil but we understand from the learned counsel, who appear in the case and both of whom understand Tamil well enough, that the Tamil word "Bhayankaram" has been rightly translated as "terrific". We plead our inability to understand what is meant by a "terrific" murder because all murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence, then every murder shall have to be visited with that sentence. In that event, death sentence will become the rule, not an exception and section 354(3) will become a dead letter. We are also not satisfied that the learned Sessions Judge made any serious effort to elicit from the accused what he wanted to say on the question of sentence. All that the learned Judge says is that "when the accused was asked on the question of sentence, he did not say anything". The obligation to hear the accused on the question of sentence which is imposed by section 235(2) of the Criminal Procedure Code is not discharged by putting a formal question to the accused as to what he has to say on the

question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of the criminal. It is the bounden duty of the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of section 235 (2) arises only after the conviction is recorded. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. Questions which the Judge can put to the accused under section 235 (2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The Court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. The Sessions Judge, in the instant case, complied with the form and letter of the obligation which Section 235(2) imposes, forgetting the spirit and substance of that obligation.

The High Court condemned the murders in terms equally strong by calling them "cold blooded" and thought that its duty to consider the propriety of the death sentence began and ended with that assertion. Its failure to see the failings of the Sessions Court in the matter of sentencing led to an unexamined confirmation of the death sentence.

Coming to the judgement of the High Court itself, there are certain features of it which need a close reflection. One of the questions before the High Court was as to the time when the double murder was committed because, upon that circumstance depended the veracity of the eye witnesses. The doctor who performed the post-mortem examination stated in his evidence that the deceased must have taken their food about four or five hours before their death. The case of the prosecution was that the murders were committed at about 9.00 p.m. P.W. 1, who is the son of the deceased Muniappan, stated in his evidence that the deceased had taken their food at 8.30 p.m.. This was a very important aspect of the case to which the High Court should have applied its mind with care. Instead, it took an extempore expedient by saying: "Both the deceased might have died a couple of hours after they substained the injuries at 9.00 p.m.". It is impossible to appreciate how, after being shot in the chest and receiving the kind of injuries

which are described in the post-mortem report, the deceased could have survived for a couple of hours after they were shot.

Yet another question which had an important bearing on the case was as to the delay caused in filing the F.I.R. The case of the prosecution is that P.W. 1 went to the Police Station promptly but the solitary police constable who was present there directed him to go to the village Munsif to have his complaint recorded. Now, the record of the Police Station shows that a Sub-Inspector of Police was also present at the Police Station which falsifies the evidence that only a police constable was present at the Police Station at the material time and, therefore, the F.I.R. could not be recorded. The High Court has dealt with this aspect of the matter thus :

> "In passing, we may mention that this is a grave dereliction of duty on the part of the policeman who was in charge of the police station at that time and is a matter that ought to be enquired into by the higher authorities. We hope that suitable directions will be issued to subordinate officers in this district to prevent a recurrence of such lapses on the part of policemen when reports of cognizable offences are given."

The High Court added that the Inspector of Police was not on good terms with the Sub-Inspector and, therefore, the former made a false entry that the latter was present at the police station, which, according to the High Court, was a serious matter which required to be probed by the Senior Officers. We are not quite sure whether there is credible evidence on record to show any enmity between the Inspector and the Sub-Inspector and whether the High Court merely relied on the statement made by counsel for the State that the relations between the two Police Officers were cordial. Whatever that may be, we do not think that the High Court has explained satisfactorily why the F.I.R. was not recorded at the police station when P.W.1 went there. The ex-parte strictures passed by the High Court are likely to involve the two Police Officers or at least one of them into grave consequences. They should have been given an opportunity to explain themselves before the High Court persuaded itself to make such scathing criticism on their conduct.

There is one more aspect of the Judgment of the High Court, which, with great respect, we are unable to appreciate. A question arose before the High Court as to whether a "muchilikka" bears the signature of the appellant. The High Court compared the

admitted signatures of the appellant with the disputed signature and came to the conclusion that the disputed signature was of the appellant himself. The High Court castigated the Public Prosecutor who conducted the prosecution in the Sessions Court by saying that he had not followed the cross-examination of P.W.1 "with attention, and not chosen to bring to the notice of P.W. 1 that the accused had signed the muchilikka, exhibit P. 1. We do not know how the High Court came to know that the Public Prosecutor was not following the cross-examination of the witness with attention, but we can guess why the High Court made that observation. It added in parenthesis : "such lapses on the part of this Public Prosecutor have become frequent and have been commented upon by us, and we hope that at least hereafter he will take some interest in the cases which he is conducting." It is not the normal function of the High Court to pass judgment on the conduct of lawyers who appear before the lower courts. One should understand if the High Court were to make its guarded observation on the conduct of lawyers appearing before it. But how the learned Judges of the High Court had, in their capacity as Judges of the High Court, come to know that "such lapses on the part of *this* Public Prosecutor have become frequent.....," we are unable to understand.

These various matters make it unsafe to confirm the sentence of death imposed upon the appellant. The reasons given by the learned Sessions Judge for imposing the death sentence are not special reasons within the meaning of section 354(3) of the Criminal Procedure Code and we are not sure whether, if he were cognisant of his high responsibility under that provision, he would have necessarily imposed the death sentence. Accordingly, we set aside the sentence of death and sentence the appellant to imprisonment for life.

N.V.K. *Appeal allowed.*