A MOORTHY

v.

STATE OF TAMIL NADU

MAY 9, 1988

B [A.P. SEN AND L.M. SHARMA, JJ.]

Indian Penal Code, 1860: Section 302—Appellant convicted of murder of lady and son—Death sentence by trial court—Confirmed by High Court—Courts below—Whether right in imposing death penalty—Mitigating circumstances—Unfortunate relationship between deceased, an elderly lady and appellant, in mid 20s—Sudden spurning by partner—Appellant experiencing disappointment of discarded lover—Vicious effect of film picturising violence seen by appellant—Supreme Court converting death sentence to life imprisonment.

C

The prosecution case was: The appellant, who was working under D **P.W.1, developed intimacy with P.W.1's wife. However, on being found out by her daughter, P.W.2, the wife was forced to terminate this relationship.**

Then, on 20.7.1985, the appellant saw a late night film containing murder scenes of four women and told his friend, P.W.5, that he would E **take revenge for the betrayal by a lady. Thereafter he went to the house of P.W.1 and attacked the wife with knife, and killed her son when he intervened. He also caused grievous injury to the daughter.**

The appellant was convicted by the trial court under s. 302 IPC for double murder of the woman and her son and also under s. 307 IPC F **for attempting to kill her daughter and for house trespass in order to commit the aforesaid offences, and sentenced to death and life imprisonment respectively.**

The High Court dismissed the appeal, and confirmed the death sentence.

G

In the appeal by special leave, it was contended that although the appellant was not in such a mental state as to attract s. 84 of the IPC, he was certainly so agitated on account of the circumstances beyond his control that he should be spared from the extreme penalty of death.

H **Allowing the appeal,**

HELD: The deceased was an elderly lady with two children who took a defiant attitude, defending her conduct when she was first confronted by her own daughter, which suggests that the unfortunate relationship between her and the appellant, in his mid 20s, had developed with her encouragement. When suddenly spurned by his partner, the appellant must have experienced the disappointment of a discarded lover. His mental agitation was further fuelled by the movie, showing murder after murder. And when this upsets a youngman, already vulnerably disturbed, the society cannot be completely absolved of sharing the responsibility for the tragedy resulting from the vicious effect of films picturising violence. [225F-H; 226A-B]

Considering all these circumstances, and having regard to the fact that when commanded by P.W.16, the appellant stopped immediately, thereby resulting in the life of the daughter being saved, and that he did not attempt to escape, the sentence of death passed against the appellant under s. 302 Indian Penal Code is converted to imprisonment for life. [226B-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 317 of 1988.

From the Judgment and Order dated 23.1.1987 of the Madras High Court in Criminal Appeal No. 408 of 1986 and R.T. 6 of 1986.

U.R. Lalit, V. Krishnamurthy and V. Balachandran for the Appellant.

A.V. Rangam for the Respondent.

The Judgment of the Court was delivered by

SHARMA, J. The appellant was convicted by the trial court for double murder of a woman, Jayasambal by name and her son Vijay Anand, and was sentenced to death. He was further convicted under s. 307, I.P.C. for attempting to kill Vijay Anand's sister Kavitha Priyadarsini and for house trespass in order to commit the aforesaid offences, and was sentenced to life imprisonment under each of the two counts. His appeal before the Madras High Court was dismissed and the sentence of death confirmed. The present Special Leave Petition was filed against this judgment.

2. At the preliminary hearing we were satisfied that the appel-

A lant was rightly convicted as mentioned earlier. We, however, directed notice to be issued on the question of sentence. Accordingly, limited special leave is granted.

3. According to the case of the prosecution, Dr. Manickasamy (P.W.1), the husband of the deceased Jayasambal and father of B deceased Vijay Anand, was a doctor working in the Government Hospital at Sadras and the appellant as a Leprosy Inspector under him. The doctor had taken a second wife whom he was keeping in another house with their 3 children. The appellant developed close association with the doctor's family and became intimate with Jayasambal. The daughter Kavitha Priyadarsini (P.W.2), one day in 1984, found to her C shock, her mother Jayasambal and the appellant in a compromising position, and raised a stiff protest with her mother. Jayasambal attempted to justify her romance on the ground that the doctor P.W.1 was also having two women in his life. When Kavitha threatened that she would report the matter to her father, she (Jayasambal) relented and agreed to terminate the illicit relationship on which Kavitha pro- D mised silence. Thus forced by her daughter, Jayasambal attempted to avoid the company of the appellant and to repel his advances. In the meantime the family had changed its residence and the younger sister of Jayasambal joined them and started living with them. She was examined in the case as P.W.3.

E 4. On 20.7.1985 the appellant went to a late night cinema show with his friend P.W.5. The film contained murder scenes of four women. When the appellant came out of the cinema hall after midnight he told his friend that he would take revenge for the betrayal by a lady. He did not give any detail. P.W.5 stated at the trial that after dropping him at the dispensary, where he lived, the appellant left by a F bicycle; and he learnt the next morning about the death of Jayasambal.

5. According to the further prosecution story the appellant knocked the door of P.W.1 soon thereafter. The doctor came out of his house and the appellant suddenly rushed into his bed room, locked the door from inside and attacked Jayasambal with a knife. The boy G Vijay Anand aged about 12 years, got up and attempted to intervene and was killed. His elder sister Kavitha (P.W.2) also became a victim and suffered grievous injury. The doctor, P.W.1, and Jayasambal's younger sister (P.W.3) raised shouts which attracted P.W.16, a Police Inspector living in the neighbourhood. The Police Inspector saw the accused through the window with a knife in his hand and ordered him H to stop and to open the door. The appellant obeyed.

6. Both the trial court and the High Court, on appeal, closely examined the evidence and came to the conclusion that the prosecution story was correct. A plea of insanity under s. 84, I.P.C. taken on behalf of the accused was rejected. We have examined the evidence and the circumstances and are in agreement with the view of the High Court.

7. However, the question is whether the courts below were right in imposing death penalty on the appellant or whether the appropriate sentence would be imprisonment for life. *Prima facie* the case appears to be a very serious one where two persons were killed and a third one seriously injured. The death of a 12 year boy trying to save his mother and the serious injury to his elder sister leaves one shocked. Mr. Lalit, the learned counsel for the appellant contended that although the appellant was not in such a mental state so as to attract s. 84, I.P.C., he was certainly so agitated on account of circumstances beyond his control that he should be spared from the extreme penalty of death. He relied upon the decision in *Srirangan* v. *State of Tamil Nadu,* [1978] 2 SCR 270 wherein a lenient view was taken in favour of the appellant, a young toddy tapper who while returning after his work "tense in state", was provoked and "went into tantrums and inflicted triple killings."

8. We have closely examined the circumstances in which the tragic event took place. The deceased Jayasambal at the time of murder was about 35 years old with a teen-aged daughter and a 12 year old son, and the appellant was in his late 20s. She was united with the doctor through love marriage, but the husband later took another wife and got 3 children from her. The appellant was employed in the hospital where the doctor P.W.1 was posted. In this background the unfortunate illicit relationship developed between the deceased and the appellant when the latter was in his mid 20s. The deceased was an elderly lady with two children who took a defiant attitude, defending her conduct when she was first confronted by her own daughter, which suggests that the unfortunate relationship had developed with her encouragement. When suddenly spurned by his partner, the appellant must have experienced the disappointment of a discarded lover. We do not suggest that the erring wife should not have corrected herself nor can the persistence of the appellant in the situation be appreciated, but we are trying to analyse his psychology. His mental agitation was further fuelled by the movie, showing murder after murder. The vicious effect of films picturising violence in detail on impressionable minds has been subject of serious concern for some time now, but unfortunately no

A effective step has been taken so far to curb the growing tendency of a section of the film industry to cash on human weakness. And when this upsets a youngman, already vulnerably disturbed, the society cannot be completely absolved from sharing the responsibility of the resulting tragedy. Proceeding further with the facts in the present case, we find that when commanded by P.W. 16, the appellant stopped immediately, B as a result of which the life of Kavitha was saved, opened the door, came out of the room and did not attempt to escape.

9. Considering the above circumstances appearing from the prosecution evidence, we are of the view that the sentence of death passed against the appellant under s. 302, Indian Penal Code, should be C converted to imprisonment for life. Let that be done and let all the sentences of imprisonment run concurrently.

N.P.V. Appeal allowed.