

IN THE HIGH COURT OF KERALA

Hon'ble Justice V R Krishna Iyer

Chacko vs State of Kerala

Citation: 1971 KLT 115: 1971 CriLJ 1251

JUDGMENT

1. This case highlights a problem of frequent occurrence in a society below the line of poverty. A literary man might depict the picture as if society were the villain of the piece, but the law, being obligated to the maintenance of order, is made of sterner stuff and deals with men whose circumstances may drive them to deviations called crimes in a punitive way, so that there may be deterrence for him and for others from a repetition of such antisocial acts and correctional treatment if that were possible, in the case of a diseased mind which an offender usually possesses.

2. The accused, who is the revision petitioner, has been convicted for an offence Under Section 379, IPC for allegedly committing the theft of two five-rupee notes unobtrusively from the pocket of P.W. 1, a fellow passenger who was travelling in bus K. L, Rule 2778 along the Mattancherri-Kaloor road on 19-11-1968 somewhere about 10 a.m. In short, the revision petitioner was charged with 'peaceful' pick-pocketing of an unsuspecting fellow passenger from a crowded bus during a rush hour in the forenoon .of the 19th November, 1968. He was found guilty although he denied the offence; and his counsel in this Court cutely urged arguments about direct evidence being absent or incredible but the disingenuous plea of the revision petitioner in the courts below and the ingenious submissions of his counsel in this Court share the same fate on the merits. I have no hesitation to hold that Shri Chacko, the offender, has been rightly convicted for theft in a public vehicle.

3. In every criminal case, a dichotomy becomes inevitable; culpability is the first stage and the sentence to be awarded the second. Being challaned as an accused was no novelty for Shri Chacko even as a criminal conviction was not the first or even the second occasion when he was marched into a prison cell. The learned Public Prosecutor has brought to my notice his antecedents on the criminal side which are hardly complimentary to him or helpful to the plea for leniency his counsel has persisted in. But what are the circumstances of the man? Chacko, according to the record, is around 38 years and his calling is nil, although the Public Prosecutor would sarcastically describe it to be stealing since there are three pending cases of theft against him. It must be noticed that the man has a family to support and 6 children to bring up. Burdened by parental obligations, left to starve without any licit employment, the culprit has turned to petty crime to make a living, if one may

describe his circumstances sardonically. Apparently, he is of somewhat violent disposition because there is the hard fact that a few years ago he was involved in a case and received punishment in the shape of two years imprisonment Under Section' 304, Part II, IPC One may visualise his ethical personality as hardened by economic adversity and by life in jail, nevertheless, fighting to live and to keep his family going.

Counsel for the petitioner states that his client is a fisherman and is now lawfully employed. It is common ground that his eldest son is also a worker earning Rs. 5/- per day. The prospects of turning a new leaf and living a licit life of responsibility and affection for his family are not altogether lost. The risk of becoming an anti-social, light-fingered when the opportunity offers itself and peacefully pick-pocketing his companions if a police man is not at his elbow, and even resorting to force it driven to that need cannot be ruled out. The totality of circumstances relevant to his present stage of the case has not received that specialised study that the law requires or humanism and Justice regard as proper.

4. The trial court as well as the appellate court have awarded six months rigorous imprisonment for the theft of Rs. 10/- of which the accused was found guilty. True it is, that the offence cannot be treated as trivial; nor can I exaggerate it out of all proportions to dramatise the petitioner as a public criminal who deserves condign punishment of a very severe sort. Being humane and sober in viewing the offence in perspective and moderating the punishment, for the crime actually committed, I am inclined to adopt the broad approach made by Mr. Justice Madhavan Nair in 1967 Ker LT 298 : 1968 Cri LJ 410. His Lordship has very elaborately considered the precedents on the point, if I may say so with great deference, where a person is guilty of a comparatively small crime, but has criminal antecedents of a frightful sort. Although the particular decision turned on Section'75, IPC and Section 348, Criminal P.C. there are observations therein which serve as correct guidelines in avoiding extremes of trivial or draconian punishment when we come across a convict whose particular offence is not serious but whose history arouses social indignation The mere fact that a man has been convicted many times before, may not by itself be a sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself. We must also try to find out whether the petitioner is irreclaimably addicted to serious crime, and have some regard to his social and family circumstances as well as his previous career.

Fforde. J. observed very rightly, if I may say so with respect;

I have repeatedly pointed out that for an offence trivial in itself, as is the present one greatly enhanced punishment should not be inflicted merely because there have

been previous convictions against the offender. In my judgment a sentence of six months' imprisonment would meet the ends of justice, and I, accordingly, accept this appeal to the extent of reducing the punishment from five years' rigorous imprisonment to six months' rigorous imprisonment.

I agree with Mr. Justice Pandurang Row's observations in A.I.R. 1937 Mad 231 where his Lordship reduced the sentence in a case of theft of property worth Rs. 50/- with the observations:

There seems to be an idea prevalent in the minds of some Judges that there is a rule that the sentence on an old offender should always be at least a little more severe than the sentence just previous. This so-called rule cannot be supported by any good reason.

It may be an excellent rule of thumb, but I do not think, in imposing sentences, such a rule can be safely followed, in the interests of the proper administration of criminal justice. While the sentences imposed on criminals should be adequate to the offence, there is every reason why they should not be excessive. Apart from the injustice to the offender which an excessive sentence entails, such a sentence tends to undermine public confidence in the administration of criminal justice.

5. The winds of change are blowing towards a correctional approach to and the humanist therapy in handling criminals. I therefore think that a direction largely influenced by the method adopted by His Lordship Mr. Justice Madhavan Nair in the ruling aforesaid may serve the ends of justice in the present case. Considering the age of the offender, the possibility of redeemability, the family obligations to which he is alive, the fact of his eldest son coming forward to assure his father's good behaviour and the other environs I have already adverted to, I do not think that any irreversible change in the psychic chemistry of the man has taken place, The prognosis is not too bad to deserve dismissal of his prayer for ameliorative treatment: I therefore reduce the sentence to a period of two weeks of rigorous imprisonment less the period of three days already undergone. I superadd a fine of Rs. 300/- to be paid within three months. The alleged employer, of the petitioner, Shri Krishnan, son of Vava, and the son of the petitioner, Sri Thankachan will stand surety for payment of the fine in which case alone the period of three months for payment of the fine will be granted. In default of payment of fine or of furnishing the aforesaid two sureties within one week, the petitioner will undergo an additional period of imprisonment of two weeks in lieu of payment of fine.

A copy of this judgment will be sent to the District Probation Officer having jurisdiction in Ernakulam District who will watch over the behaviour of and guide in

the correctional spirit the conduct of the revision petitioner with a view to see that he turns a new page in life. I am making this direction in the spirit in which a similar direction was made in 1967 Ker LT 298 : 1968 Cri LJ 410. The sentence is modified to the extent indicated above and the revision petition disposed of accordingly. Orders accordingly.