

MURDER CASES IN ERNAKULAM—AN EMPIRICAL ANALYSIS*

Ordinarily, law researchers rely on the judgments of appellate courts for conducting studies on legal issues. The usual criticism levelled against this practice is that the students as well as teachers neglect areas where law is directly applied to the fact situations. The scarcity of empirical studies based on trial court judgments may perhaps justify this criticism. Although in conducting such studies, there are difficulties such as the gruelling exploration into the materials from the trial court whose judgments are not reported in law journals, the length of time to be spent for collecting those material and the necessity of interviewing not only the officers of the Court and the lawyers but also the parties and other persons connected with the case, for getting full picture of the problems—such empirical investigations are of immense value for looking at our legal system in the correct perspective and for monitoring reform at restructuring our laws. The study¹ is confined to murder cases in Ernakulam, with a view to focussing attention on points which may, with profit, be noted and acted upon by the authorities.

About 50 per cent of the total number of cases handled by the Sessions Court at Ernakulam in the years 1974 and 1975 consisted of murder cases. In 1974 in Ernakulam out of 107 Sessions cases 50 were murder cases. In 1975 out of 79 Sessions cases 38 were murder cases. Out of these cases of 1974

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1. The present writer could collect the cases and details from the Ernakulam Sessions Court with the permission of the Honourable High Court of Kerala in connection with a project work.

and 1975 thirty judgments were selected at random for this study.

GENERAL FEATURES

The causes for murder, as reflected in the judgments, cover woman, wealth, sudden quarrel, liquor and political animosity.²

An interesting aspect noticed during the course of analysis is that twenty out of thirty murders occurred in areas in *Thodupuzha* and *Muvattupuzha* taluks which are now in the Idukki district. The area-wise break-up is as follows:

Muvattupuzha Thodupuzha	— 20
Ernakulam	— 7
Mattancherry	— 2
North Parur	— 1

Out of the thirty cases scrutinised, in eleven cases defence counsels were appointed by the Court|State as the accused were poor and as they were unable to engage lawyers on their own.

EFFECT OF BAIL

In nineteen cases the accused were enlarged on bail whereas in eleven cases the accused were in custody. In the nineteen cases, where the accused were on bail, there have been eleven acquittals. Out of the 11 cases in which the accused persons were not granted bail, in eight cases conviction was recorded. Though no conclusive assertion as to the effect of bail on the rate of acquittal can be made, there seems to be apparent connexion between bail and acquittal.

2.	<i>Category</i>	<i>Number</i>
	Woman	Six
	Wealth	Eight
	Sudden quarrel	Fourteen
	Liquor	One
	Political animosity	One

It is also noteworthy that the court was generally liberal in granting bail. Indeed, the court has had occasion to note the consequence of granting bail on the behaviour of parties.³

WITNESSES

Witnesses are the most important factor in the judicial process towards reaching at the truth. It is found that the police confronts a lot of difficulties not only in procuring witnesses but in getting their truthful evidence led in the court. The usual complaint of the police is that their difficulties are not being appreciated by the court. In the thirty cases under review many prosecution witnesses have been declared hostile. Most of these witnesses are found to be relations or close friends of the accused. Also, many a witness has been given up by the prosecution because of their non-availability for giving evidence in the Court. It is, however, interesting to point out that the court is not altogether unaware of the problems of the police.⁴ The Court

3. For example, in Sessions Case No. 60|1975, the court noted:

“...But Pw. 3 admitted that when the 2nd accused was released on bail in this case, Pw. 3 had filed a petition against the second accused. Pw. 3 says that it was filed because the 2nd accused came to his house after release on bail and threatened him.”

4. The court took pains to examine the difficulties of the police and pointed out in Sessions Case 12|74 thus:

“At the very outset I have to mention a peculiar circumstance which would normally cause difficulty to the Investigating Officers to get at the proper witnesses in the course of the investigation and put them in the witness box for examination during the trial in view of the fact that the entire population in *Kulamavu* is floating population who came to the place in connection with the construction of *Kulamavu Dam* a part of the *Idukki* project. People came as workers, petty traders and contractors and took up temporary residence there and often leave to their permanent place of residence from various parts of the State. I make special mention about this aspect of the case because 3 of the eye-witnesses cited by the prosecution as per the charge sheet were not available for examination at the time of trial and the defence counsel made use of the same to launch an

(f. n. contd.)

did not believe the prosecution witnesses as a matter of course. Instead, it reasoned out the reliability of the witnesses in the circumstances of each case. The Court's comments in one of the cases⁵ regarding the credibility of hillmen are indicative of its approach. The court commented:-

“From the fact that the prosecution witnesses are hillmen it is likely to be presumed that they are ignorant and rustic folk without any civilisation. That is not the case at all. In fact, I noticed no difference at all between these hillmen and inhabitants of the plains. Even the language of the hillmen was as refined as that of ordinary citizens.”

The evidence of the child witnesses was either relied upon or rejected by the Court depending upon the circumstances of each case.⁶

ROLE OF POLICE

Though the allegations against the police in some cases were found by the court to be false, in many cases the police came to be criticized. It is common knowledge that police sometimes engage their stock witnesses to make the prosecution case strong.⁷ It is usually alleged that the police do not take interest

attack against the prosecution that the prosecution has not placed the entire facts of the case before court especially because of the non-availability of C.W.5 Gopi, who was one among the trio and was present throughout from the beginning till the end. According to the prosecution witnesses C.W.5 was not seen after the incident and the prosecution submitted that he is not available for examination.”

5. S.C. 80|74.

6. For example, while the evidence of the child witness in S.C. 3|75 was believed by the Court the statement of the child witness in S.C. 6|75 was not relied upon by it.

7. The court's comment on the testimony of such a witness in S.C. 1|74 is worth-quoting:—

“A reading of the testimony of P.W. 11 shows that she is a tool
(f. n. contd.)

in the conduct of cases once the charge is made. It is also alleged that they hurl volley of threats at witnesses and compel them to depose in favour of the prosecution. But the court was realistic in its examination of these allegations against the police in the conduct of the cases.⁸

CONFESSION AND RECOVERY OF ARTICLES WHILE IN CUSTODY

There have been recoveries of weapons of offence and other incriminating evidence in many cases. It was almost the practice of the accused in such cases to allege that the recoveries were not true and that the police manipulated such evidence. But the court decided the admissibility or otherwise of such evidence depending upon the peculiar circumstance of each case. These

in the hands of the police as her husband is a thief who is in the K.D. list and she often used to visit the police for some case of her husband or other.

8. In S.C. 55/75 there were allegations that the police exerted pressure on the prosecution witnesses to give evidence against the accused. However, the Court after examining the circumstances repelled this argument saying:—

“While considering the evidence of the prosecution witnesses the main grievance of the accused is that they are giving evidence against them as a result of pressure exerted by the police. It is in evidence—fact admitted by P.W. 36 himself—that the C.I. of Police, S.I. of police and Head Constable were attending this Court throughout the trial of this case, though none of them was inside the court hall when the witnesses were examined. In the face of recent tendency noticed by me—a fact advanced also by the learned advocate for the accused—that the police do not take much interest in the conduct of the case, once the charge-sheet is submitted to the Court, I should have thought that this assistance by the police officers to the learned P.P. in the conduct of the case—is a welcome feature. But the complaint of the accused is that the police have been threatening the witnesses outside this court and compelling them to give evidence as they wanted, at dire consequences. I find that there is little truth—at least it has not been proved in this complaint. The C.I. of Police, P.W. 36 stated that he has been attending this court in the course of the trial as directed by his superior officers because this is one of the most heinous double murders committed in that locality.”

judgments give one an impression that just as in the case of allegations against police, the court did adopt a realistic approach in this respect also. Confessions recorded in many cases had not been acted upon while in some cases they were rejected due to retraction; in some other cases they were not accepted because of the irregularities in the recording of confessions.⁹ Confessions in many cases have not been relied upon.

VICTIM'S ROLE IN THE CRIME AND THE COURT

While in two cases¹⁰ the role of the victim was considered

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9. In S.C. 62|85 it was found that the recording of the confession was improper. In that case the prosecution story was that the accused strangled his wife to death with a rope. There were recoveries of some ornaments worn by the deceased at the instance of the accused while he was in custody. Regarding the admissibility of confession, the court observed:—

“In that confession itself the learned Magistrate has recorded certain facts from which it can be concluded that the accused was giving that confession under the impression that he would be excused of the crime. It is true that the learned Magistrate was convinced before recording the confession that the accused was going to make a voluntary statement. But the confession does not contain any date. It contains only the signature of the learned Magistrate. It does not contain any designation under the signature. It is also seen that when the accused gave a reason for his horrible deed the learned magistrate asked the accused what was the horrible deed committed by him. Then the accused answered that he murdered the deceased. Again the learned Magistrate asked the accused in what manner he committed the murder. Then the accused replied that it was by means of the rope. The learned Magistrate should not have put such questions to the accused, while the latter was giving a voluntary statement of his own. The confession has also been retracted. In these circumstances, the value of the confession is little.”

10. In S.C. 38|75, 44|75 and 55|75 the victims being rowdies or mischievous persons had appropriately been considered by the court. In 38|75 the accused stabbed the father-in-law's brother to death. It was led in evidence that the victim was a rowdy. This was considered by the court while awarding the sentence. In S.C. 44|75

(f. n. contd.)

at the stage of selecting an appropriate sentence, in another¹¹ the very determination of guilt was influenced by the fact that the victim was a notorious criminal.

TIME LAG

It was noticed that in 1974 cases on an average of three months elapsed between the date of occurrence and committal. The average period spent from committal to judgment was five months. In fact it ranged from two months to eight and a half months though the average works out to five months. In 1975 cases only two months elapsed between the date of occurrence and date of committal. The period between date of committal and judgment on an average was 4 months. In these cases also the period ranged from 2 months to 8 months though the average works out to 4 months.

INTERFERENCE BY THE HIGH COURT

Out of these thirty cases examined, the Kerala High Court interfered in fifteen. Six were affirmed; another six reversed and acquittal recorded. In the remaining three convictions were altered.

CASES HAVING SPECIAL FEATURES

There was one case in which a mother threw her three children in a tank and tried to commit suicide. Though the

the prosecution case was that the accused killed his father. It was brought in evidence that the accused's father used to pock up quarrels with him and his wife quite often. Due to these quarrels the accused's first and second wives deserted him. This was considered by the court as a mitigating factor while awarding the sentence.

11. In S.C. 58/75 the deceased was a notorious criminal. All the prosecution witnesses turned hostile to the prosecution in the Court and the guilt could not be proved mainly due to the non-cooperation of the prosecution witnesses. The court had also taken note of the fact that the victim was a criminal.

children could not be rescued she was rescued by her husband and another person. It was the prosecution case that the accused had strained relations with her husband and that earlier on that day of occurrence she tried to commit murder of her children by poisoning them. The Court found that there was no eye-witness. It concluded that the prosecution could not prove the charge against the accused and as such she was acquitted.

In one case the Sessions Court seemed to have faltered in applying the law to the factual situations correctly. It was a case¹² in which the accused while aiming a blow at a woman with knife, hit a baby on its head. The baby died as a result of the injury. The Sessions Court concluded that the accused was guilty of murder and was sentenced to undergo life imprisonment. On appeal the High Court found that the accused was not guilty of murder and that by operation of Section 301 of the Indian Penal Code¹³ he could be found guilty of an offence of grievous hurt.

In another case¹⁴ the charge was that the victim's wife and brother-in-law cut him to death while he was asleep. The ten year old son, of the victim and the first accused, was the eye-witness. The Court found the first accused to be responsible for murder and sentenced her to death. The High Court on appeal commented:-

"The injuries being all on the head region, there are no materials to differentiate between or identify the injuries caused by the appellant and those caused by the second accused. In other words, there is no definite evidence to

12. S.C. 40|74.

13. S. 301 of I.P.C. enacts: If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knows himself to be likely to cause.

14. S.C. 3|75

show that it was the appellant who caused the injuries which were responsible for the death of her husband.”

The Court therefore altered the conviction for murder.

There was one revengeful murder.¹⁵ The accused murdered a person whose son had killed the father of the accused earlier. It was mentioned that the sense of revenge was very strong that the accused licked the blood of the deceased. The two accused persons were found guilty and sentenced to life imprisonment by the Sessions Judge. On appeal, the High Court altered the conviction.

There were two cases in which the husbands killed their wives by strangulating them with rope. In both the cases the accused seemed to have committed murder for robbing the ornaments of their wives. The Sessions Court found the accused guilty in both.

In another case¹⁶ the three accused were Harijans. The main accused was beaten up by the deceased for his misbehaviour with daughter of the deceased. The main accused and his parents who were the other accused in the case, confronted the deceased. The main accused stabbed him to death. The Sessions Court convicted the main accused for murder whereas the parents were convicted for simple hurt.¹⁷ The parents were released after admonition. On appeal the High Court acquitted all the three accused because according to the Court, they did not exceed their right of private defence.

JAIL APPEALS

There were six jail appeals and the High Court confirmed the decisions of the Sessions Court in four appeals. The remaining two resulted in acquittal.

15. S.C. 60|75.

16. S.C. 71|75.

17. Under Section 324 read with Section 34 of the Indian Penal Code.

HEARING ON THE QUESTION OF SENTENCE

In all the cases the accused were given the opportunity to be heard on the question of sentence. The grounds of mitigation argued and accepted by the court include youthfulness of the offender, the need for safeguarding the interests of the dependants of the accused, the lack of premeditation and the conduct and character of the victims.

K. N. CHANDRASEKHARAN PILLAI*

* Reader, Department of Law, University of Cochin, Cochin-22.