

PETITIONER:
VELLELI AND OTHERS

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 10/09/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

The three appellants were put up for trial before the Sessions Court, Madurai for committing the murder for vellaikutty. To be more precise, the second appellant Mandaipuli was charged for an offence punishable under Section 302 of the Indian Penal Code whereas the other two appellants Velleli @ Raman and Sogai Puli @ Muthu were charged under Section 302 read with 34 of the Indian Penal Code.

The Sessions Judge, Madurai on appreciation of the oral evidence and other materials on record vide his judgment and order dated July 24, 1977, acquitted all the appellants. The State of Tamil Nadu being aggrieved by the order of acquittal preferred an appeal under section 378 of the code of criminal procedure to the High Court at Madras and the learned High Court vide its judgment and order dated February 5, 1977, reversed the order of acquittal and convicted A-2 under section 302 IPC and the appellant Nos. 1 and 3 under section 302 read with 34 of the Indian penal code and sentenced each of them to undergo imprisonment for life.

2. The case of the prosecution as disclosed at the trial may be briefly summarised as under:-

Vellaikutty @ Sanjai, the deceased, was the father of Velu (PW 1). Palani (PW 2) was the elder brother of the deceased who was staying alongwith his wife and son Vel in Atchipuram village situated about 4 miles to the south of Nilakottai. Palani (PW 2) was also staying in the same village. The deceased owned certain lands and a house in the said village. The appellants are brothers and they belong to the village koothamatti.

3. It is alleged by the prosecution that the accused's paternal uncle Muthu Servai had three sons, Chidambaram, and, lruvankutti. About ten years prior to 1977, a dispute arose about the village common funds between Muthu Servai's sons chidambaram and Andi on the one hand koothampatti Periathankar Kulu servai on the other. Because of this dispute, Chidambaram and Andi left their cattle first contrary to the usual practice whereby Kulu servai used to take his cattle first on the Pongal day. This episode caused

a trouble in the village and resulted in the murder of Chidambaram and Andi. Muthu servai gave a complaint about the said murder against Anandan, Chinnakalai, Palani and Kulu servai and that case ended in acquittal of all the accused. The deceased and palani (PW 2) continued to be friendly with Kulu servai even after that case. Consequently, Muthu servai was not well disposed of towards the deceased and Palani (PW 2)

Sometime in 1973, one Iruvenkutti was murdered at Koothampatti. Muthu servai and the appellants herein complained about the murder against the deceased, PW 2's father in law Ponnayyan and Ponnayyan's son pitchai. All these three persons were tried but acquitted by the prosecution that on this issue, there was an enmity between the deceased family on the one hand and the accused on the other. It is further alleged by the prosecution that about three months prior to the occurrence in the present case (17-12-1976), A-2 lodged a complaint in the Sambatti police Station alleging that the deceased had assaulted him. The police found the deceased guilty in that petty case No.283/76 and accordingly he was sentenced to pay a fine of Rs.25/-. The deceased paid the fine. One day, the accused while passing through the lands of the deceased for reaching their lands threatened to murder the deceased in retaliation of the earlier murder. Thereupon, PW1 and PW2 herein and the deceased lodged complaints against the accused to Subbiah Gounder (PW 9), the village munsiff of kottoor who told them that since the accused were residents of different villages, no action could be taken. However, he assured them that he would advise them to behave properly. Since then, deceased was scared of the accused and often used to take with him either Velu (PW 1) or Palani (PW 2) whenever he used to go.

4. On 17-12-1976, the day of occurrence, the deceased and Velu(PW 1) went to village Nilakottai in the afternoon on the cycle (M.O.1) driven by Velu (PW 1). The deceased was sitting on the carrier. The deceased went to the market and purchased the kochai string (M.O.2), betel leaves and nut. Thereafter Velu (PW 1) and the deceased left for their village at about 4.30 P.M. Paramaswami (PW 8), a resident of Michaelplayam had a cycle shop in the said village and was knowing the accused as well as Velu (PW 1) and the deceased. Velu (PW 1) and the deceased went to this cycle shop and filed the air in the tube of his cycle.

5. When the deceased and Velu (PW 1) were proceeding by the cycle and came near the culvert, north of the Jangalpatti branch road at about 5.00 P.M., A-1 came running from the Odai situated on the west of the said culvert with an aruval in his hand saying that he would not leave them without murdering in retaliation of the earlier murder. Velu (PW 1) when turned back, saw A-1 was hacking the deceased on the back side of his head with an aruval. The deceased jumped down from the cycle which was thereafter pushed by velu (PW 1). The deceased left his chappal (M.O.3) which he was wearing at that time and ran towards south covering the back portion of his head with his thundu (M.O.7) and raised an alarm. A-1 then chased the deceased. Velu (PW 1) ran behind A-1. A-2 and A-3 thereafter suddenly came from the side of the banyan tree with a knife and an aruval respectively in their hands and obstructed the deceased while he was running on the tar road. A-2 stabbed the deceased while he was running on the knife on the chest, back and right flank indiscriminately. A-3 hacked the deceased with an aruval on the chest and right shoulder indiscriminately. In the meantime, A-1 also reached at the said place and thereafter A-1 to A-3 started assaulting the

deceased with the respective weapons in their hands. The deceased fell down on the middle of the road. Velu (PW 1) then raised an alarm. A-1 threatened him not to raise the shouts otherwise he would also be killed. After accused fled away. This incident of assault was also seen by Sirattai (PW 4) who was standing with his cycle at a short distance.

6. It is further alleged by the prosecution that this incident of assault was also seen by Palani (PW 2), the uncle of Velu (PW 1), who had gone to Jangalpatti for grazing the cattle and he was there at about 5.00 P.M. It is the claim of Palani (PW 2) that when he heard the shouts of Velu (PW 1), he ran in that direction and when he reached at the said place, he saw the appellants were assaulting the deceased with the weapons in their hands.

7. Anandan (PW 5), an agriculturist who owned lands adjoining the western side of the Jangalpatti branch road, after hearing the alarm reached at the place of incident, and saw the assault on the deceased by the accused. Velu (PW 1) thereafter, went running to his village, informed about the incident to his mother and brought her to the house of village munsiff Subbiah Gounder (PW 9) where the statement of Velu (PW 1) was recorded (Ex.P1) at about 6.00 P.M. They all then proceeded to the place of occurrence. PW9 then prepared wetha yadasts (Ex. P6 and Ex. P7) and proceeded to Nilakottai Police station at about 8.00 P.M. The sub Inspector attached to the said police station registered the offence and they all then left towards the place of occurrence. The Investigating officer commenced the investigation during the night and after completing thereof, a charge sheet against the appellants for the aforesaid offences came to be filed.

8. The accused denied the charges and claimed to be tried. According to them, they have been falsely implicated because of long standing enmity. They are innocent and be acquitted.

9. The prosecution in support of its case examined as many as thirteen witnesses out of which PW1, PW2 and PW4 are the eye witnesses. Dr. Thirumalaisami (PW 3) held his report is Annexure P-4.

10. The learned sessions judge, on appraisal of the oral and documentary evidence on record found that the prosecution had failed to prove the charge/charges against the appellants beyond reasonable doubt and accordingly acquitted all the accused. In an appeal by the state of Tamil Nadu to the High Court at Madras, the learned Division Bench reversed the said order of acquittal passed by the Trial Court and convicted the appellants as indicated above. It is this order of conviction and sentence passed by the high Court which is the subject matter of challenge in this appeal.

11. Mr. R.S. Hegde, the learned Counsel appearing in support of this appeal urged that the high Court was not justified in setting aside the well reasoned order of acquittal. The view taken by the trial court, in the facts and circumstances of the case was a reasonable and probable one. He urged that the judgment of the sessions court cannot be termed as perverse or based on no evidence and if this be so the High Court ought not to have interfered with the order of acquittal. He, therefore, urged that the order of conviction and sentence passed by the High Court be set aside and the order of Trial Court be restored.

12. We have carefully gone through the judgments of the courts below as also the materials on record. In our considered view, the High Court was fully justified in reversing the order of acquittal since it was based on

perverse reasoning. The Trial Court discarded the evidence of the eye witnesses merely on the ground that they happened to be the close relations of the deceased and it was not safe to base conviction on such evidence.

13. Mr. Hegde, the learned counsel appearing for the appellants urged that the evidence of Velu (PW 1) does not inspire confidence inasmuch as he might not be with the deceased at the time of incident. Velu (PW 1) was only sixteen years old at the time of incident and being the son of the deceased is highly interested witness. The evidence of Palani (PW 2) who being the elder brother of the deceased also suffers from the same infirmity. He although stated that he was present at the time of incident but without disclosing the purpose for which he had gone to the place of occurrence, the evidence of such a chance witness be not accepted as credible. Mr. Hegde then urged that if accused persons has really killed Vellaikutty in the presence of Velu (PW 1) and Palani (PW 2), they would not have spared these eye witnesses which could help in detecting the crime and criminals.

14. After going through the evidence of both these witnesses, we find that none of the contentions raised on behalf of the appellants is sustainable. Velu (PW 1) in his evidence has stated that he alongwith had purchased kochi string, betel leaves and other items. While returning, they had gone to the cycle shop of Paramaswami (PW 8) to fill the air in his cycle tube. Thereafter, they came near the culvert, from where the accused persons suddenly came and assaulted his father (Vellaikutty). The investigating officer during the spot Panchnama seized the Kochai string, betel leaves and other items that were purchased by the deceased from the bazar. This Panchnama, which stands proved, lends assurance to the credibility of the evidence of Velu (PW 1). In addition to this, Paramaswami (PW 8) has also stated on oath that at about 5.00 P.M. accused and the deceased came to his shop to fill the air in the cycle tube and thereafter they proceeded towards the culvert. His evidence also corroborates the presence of Velu (PW 1) has stated that A-2 has given a blow with knife on the back of father and thereafter chased him for some distance and in the meantime A-1, A-3 and also A-2 had assaulted the deceased.

15. The evidence of Palani (PW 2) is also to the same effect who had stated on oath that he saw the accused assaulting Vellaikutty at the culvert. The appellants cross-examined all these witnesses at great length but there is nothing to discredit their evidence.

16. Dr. Thirumalaisami (PW 3), the Asstt. Surgeon, Government Hospital, Nilakottai, on 18-12-1976 held the autopsy on the dead body of Vellaikutty and had reported as many as eighteen anti mortem incised and stab injuries. This assault could not have been made by a single accused.

17. It may also be stated that this incident was reported to the village Munsiff Subbiah Gounder (PW 9) by Palani (PW 2) vide his report Ex.P1 without any loss of time. The village munsiff (PW 9) then recorded the statement of both these witnesses namely, Velu (PW 1) and Palani (PW 2) (Ex.6 and Ex.P7) respectively and forwarded the same to the police station for appropriate action. Both these witnesses at the earliest appellants as assailants. This circumstance in our opinion again lends corroboration to the evidence of both the eye witnesses.

18. After going through the ocular evidence and other materials on record, we are of the considered view that A-2 was rightly convicted under section 302 of the Indian penal

Code. The conviction of A-1 and A-3 under Section 302/34 of the Indian penal Code in the facts and circumstances of this case is legal and valid. The learned High Court was fully justified in convicting the appellants for the offences for which they were tried, and there is no substance in this appeal.

19. In the result, appeal to stand dismissed. The appellants who are in bail, shall surrender to their bailbonds forthwith to serve out the remaining period of their respective sentences.

JUDIS