

**(2003) 07 MAD CK 0143**

**In the Madras High Court**

**Case No : Criminal Appeal No. 699 of 2000**

Kandan and Govindan

APPELLANT

Vs

Inspector of Police

RESPONDENT

**Date of Decision : 04-07-2003**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 147, 302, 304, 323

**Citation : (2003) 07 MAD CK 0143**

**Hon'ble Judges : S. Sardar Zackria Hussain, J;A.S. Venkatachalamoorthy, J**

**Bench : Division Bench**

**Advocate : V. Gopinath, for K.A. Ramakrishnan and V. Balu, for the Appellant;  
V.M.R. Rajendran, Assistant Public Prosecutor, for the Respondent**

## **Judgement**

A.S. Venkatachalamoorthy, J.—The appellants in both the above appeals were tried by the learned Additional Sessions Judge, Villupuram

for various charges in S.C. 249 of 1999 for causing the death of one Pavadai at about 10.30 a.m. on 6.11.1997 at Ervaipattinam village.

2. The learned Sessions Judge found the accused 1 to 7 guilty u/s 147 I.P.C. and sentence them to undergo six months R.I. and imposed a fine of

Rs. 500/- each; A-1 and A-2 guilty u/s 302 I.P.C. and sentenced them to undergo life imprisonment and imposed a fine of Rs. 1, 000/- each; A-3

to A-5 guilty u/s 323 I.P.C. (with reference to the attack on the deceased) and sentenced them to undergo six months R.I. and imposed a fine of

Rs. 500/- each; and A-6 and A-7 guilty u/s 323 I.P.C. (with reference to the attack on PW-1) and sentenced them to undergo six months R.I. and

imposed a fine of Rs. 500/- each.

3. C.A. 699 of 2000 has been filed by A-3 and A-4, while C.A. 753 of 2000 has

been filed by A-1, A-2 and A-5 to A-7.

4. The case of the prosecution as could be deduced from the evidence let in can be stated as under:

(a) A-1 Mani @ Kundan is the father of A-2 Selvamani. A-3 to A-7 are all Pangalis.

(b) PW-1 Settu is the nephew of the deceased Pavadai. PW-4 Kolanji is the son and PW-5 Chandra is the daughter of the deceased. PW-3 Jothi is the wife of PW-2 Palanisamy.

(c) PW-5 Chandra, the daughter of the deceased from Eduthukaranpatti was given in marriage to one Ramakannu of Ervaipattinam village, who is

now in abroad. A-1 is the brother in-law's son of PW-5. PW-5 was said to have been beaten by A-1 and in that regard there was a Panchayat at

Ervaipattinam on 6.11.1997 at about 9.00 to 9.30 a.m. PW-1, the deceased, PW-4, one Swaminathan, Murugesan and Krishnamurthy from

Ervaipattinam participated in the said Panchayat in support of PW-5 Chandra. A-1 also participated in the Panchayat and he was supported by

some others. During Panchayat, PW-4, the son of the deceased questioned A-1 as to why he beat his sister and slapped on his cheek. At that

time, Panchayatdars decided that because of this event, the grievance of PW-5 need not be considered.

(d) After the Panchayat was over, the deceased, PW-1, PW-4 and PW-5 before leaving the village, felt that they could meet the elderly gentleman

of that village by name Subramaniya Padayachi and went to see him in his Plantain garden. However, that gentleman was not there, but his son and

daughter-in-law, Pws. 2 and 3 respectively were present. All of them sat in the garden and chatting. At that time viz., at or about 10.30 a.m. the

accused, who came there, questioned the deceased and his men as to why they are still remaining in the village when Panchayat has already been

over. Then A-1 with spade handle, beat the deceased on his head; A-2 with stick beat the deceased on his head; A-3 gave a beating on the left

hip of the deceased; A-5 attacked the deceased on the right head; A-6 and A-7 beat PW-1 with sticks. Thereafter, the deceased, PW-1 and

others went to a private hospital in Kacharapalayam. The Doctor there advised them to go to Government Hospital and because of which they

proceeded to Ariyalur Government Hospital, where they reached at about 2.00 p.m. After giving initial treatment, the injured were advised to go to

the Tanjore Government Medical College Hospital, where they reached at about 4.00 p.m.

(e) PW-13 Dr. Gunaseelan attached to Tanjore Government Medical College Hospital treated the deceased at about 4.10 p.m. on that day. The

deceased was admitted as an inpatient and the accident register issued to him is Ex.P-21. The Doctor also treated PW-1, who told that they were

beaten by ten persons on 6.11.1997 at about 10.00 a.m. at Eravaipattinam by spade handle, crowbar, aruval, etc.

(f) In spite of the treatment given to the deceased, he died at about 2.40 a.m. on 7.11.1997. Thereafter, necessary intimation was sent by the

Hospital to the Outpost Police Station. PW-17 was Grade I Police Constable at the Outpost Police Station at the relevant time, who received the

said message at about 8.30 a.m. on 7.11.1997. Thereafter, message was sent to the Office of Superintendent of Police, Villupuram District over

telephone and the same was received by PW-11 Constable. PW-11 in turn informed PW-12 Head Constable of Kacharapalayam Police Station

and that was at about 9.15 a.m. Thereafter, he proceeded to the Tanjore Medical College Hospital and reached there by 4.30 p.m. PW-12 then

enquired PW-1 and recorded his statement which is marked as Ex.P-1. PW-12 also ascertained the death of the deceased in the hospital and

came back to the police station at Kacharapalayam and registered crime No. 346 of 1997 u/s 302 I.P.C. etc. He also prepared Ex.P-18 express

F.I.R and forwarded the same to the Judicial Magistrate along with Ex.P-1 complaint and copies to his superiors. Thereafter he assisted the

Inspector of Police in the investigation.

(g) PW-20 is the Inspector of Police in charge of Kacharapalayam Police Station. Mid-night at about 12 O'Clock, he received copy of F.I.R. and

proceeded to the scene of occurrence. He inspected the scene of occurrence and prepared Ex.P-2 observation mahazar and Ex.P-36 sketch in

the presence of witnesses. Thereafter he proceeded to the Tanjore Medical College Hospital and held inquest over the body of the deceased and

examined witnesses Pws. 4, 5, 7 and others between 8.30 a.m. and 10.30 a.m. Ex.P-37 is the inquest report prepared by him. Thereafter he sent

necessary requisition Ex.P-17 to the Doctor in the hospital for the purpose of conducting post mortem. The cloths of the deceased were handed

over by PW-4 were seized under mahazar Ex.P-34. On the same day he examined Pws. 1, 3, 6, 8 and others.

(h) PW-14 is the Doctor at the Tanjore Government Medical College Hospital, who received the requisition from the Inspector of Police

commenced autopsy at 1.30 p.m. on 8.11.1997. Ex.P-24 is the post mortem certificate issued by him. The Doctor noticed as many as four

injuries, which he has described as under,

1. A surgical sutured wound extending from the upper most part of the right eye towards the right mid parietal region 13 x 1 cms sutures are intact.

On dissection red coloured contusions of the both temporal parietal regions of the scalp and subscapulaer tissues.

2. Fissured fracture extending from the outer part of the left temporal to the mid parietal bone measuring 9 cm in length. On dissection, gel

formation is seen on the upper right temporal lobe. Subdural and subarachnoid haemorrhage on the entire surface.

3. Irregular laceration of the under surface of the right temporal and filled with blood clot.

4. Fissured fracture of the both middle cranial foess. fingernails cyanosed.

The Doctor has opined that the deceased would appear to have died of the effects of head injury.

(i) On 9.11.1997 at about 10.00 a.m. Inspector of Police arrested A-2, A-5 and A-7 near the bus stop of Ervaipattinam village in the presence of

witnesses. On arrest, A-2 gave a voluntary confession statement so also A-5 and A-7. The admissible portion in the confession statement of A-2

has been marked as Ex.P-3 and that of A-5 and A-7 are Exs.P-4 and Ex.P-5 respectively. Thereafter, the accused took the police party and

witnesses and MO-2 Nunastick was recovered under mahazar Ex.P-6 at about 12.30 p.m. A-5 took them to a sugarcane field, from where he

produced MO-3 stick and the same was recovered under mahazar Ex.P-7. At about 1.30 p.m. A-7 produced Mo-4 stick which he had hidden

earlier near the motor shed belonging to one Palanisamy and the same was recovered under mahazar Ex.P-8. On the same day PW-20 recorded

the statement of PW-9 to 11 and 17 and other witnesses. The Inspector then came to know that A-1 had surrendered before the Judicial

Magistrate No. I, Kallakurichi on 11.11.1997. Necessary petition was moved and the police custody of A-1 was secured. On enquiry A-1

voluntarily came forward to give confession statement and he offered to produce the spade handle, which he used to attack the deceased and

Ex.P-9 is the admissible portion of the said statement. A-1 then took the police party and witnesses to the hayrick in the garden of one

Subramanian and produced MO-1 and the same was recovered under mahazar Ex.P-10. The accused 3, 4 and 6 surrendered before the Judicial

Magistrate NO. I, Kallakurichi on 25.11.1997. The Inspector of Police made necessary requisitions to the Court and secured police custody of

those accused. Then those accused also gave a voluntary confession statement, based on which MO-6, MO-5 and MO-7 Nunnalsticks respectively

were recovered. The Inspector then sent necessary requisition to the Judicial Magistrate to send the material objects for necessary examination.

Exs.P-30, P-33 and P-34 are the chemical analysis report. The Inspector of Police thereafter completed the investigation and filed his final report.

5. On questioning u/s 313 CrI.P.C., the accused denied the guilt and pleaded total ignorance.

6. PW-15 is the Doctor attached to the Government Medical College Hospital, Tanjore, who conducted autopsy on the body of the deceased on

the basis of the requisition Ex.P-17 from the Inspector of Police. Ex.P-24 is the post mortem certificate. We have already referred to as to what

the Doctor has observed and how the injuries have been described in the said certificate. Hence we are not repeating the same over again. The

Doctor has opined that the deceased died of injuries caused on his head and that the same could have been caused by weapon like MO-1. Hence

there is ample medical evidence to show that the deceased died of homicidal violence.

7. Now the question arises is as to whether the prosecution has established that it was these appellants/accused, who have committed the said gruesome act.

8. The prosecution has examined as many as 21 witnesses; marked Exs.P-1 to P-39 and produced Mos.1 to 10. Of course, Pws. 2, 3 who are

eye witnesses have turned hostile. Hence, we are left with the other three eye witnesses Pws. 1, 4 and 5, who are the nephew of the deceased, son

and daughter of the deceased respectively. These witnesses have spoken to about the motive as well as the occurrence. The case of the

prosecution as spoken to by these witnesses is that PW-5 was given in marriage to a person called Ramakannu, a resident of Ervaipattinam and at

the time of occurrence, he was not in the village and he was abroad. The brother-in-law's son of PW-5 beat PW-5 and she informed about this

to her parents viz., the deceased and others. This was about two days prior to the occurrence. On the day of occurrence, the deceased, PW-4

and others went to this village and at their instance a Panchayat was convened. When the Panchayat was going on, it appears PW-4 slapped on

the cheek of the person who had earlier did a similar act on PW-5. The Panchayatdars came to the conclusion that the matter can be given a

quietus since one of each side had beaten the other. Thus, the Panchayat convened at 9.00 a.m. on the fateful day was over by 9.30 a.m.

Thereafter, the deceased, PW-1, 4 and 5 proceeded to see one Subramania Padayachi, an elderly gentleman of that village, before going back to

their village. He was not available but however his son and daughter-in-law were available. They were talking to them for some time when the

accused came there. According to these witnesses, the accused, seeing the prosecution party questioned that as to why they are still in the village

and started attacking the deceased. A-1 first beat the deceased with spade handle on the head of the deceased and A-2 did the same thing with a

stick. A-3 to A-5 attacked the deceased and beat him all over the body. A-6 and A-7 beat PW-1 and he also suffered injury. According to these

witnesses, first they went to a nearby native Doctor and thereafter they went to Government Hospital, Ariyalur and from there they were sent to

the Government Medical College Hospital, Tanjore and that the deceased died on the next day morning at about 2.40 a.m. in spite of the treatment

given to him.

9. The question arises for consideration is as to whether the testimonies of these witnesses viz., Pws. 1, 4 and 5 infuse confidence in the minds of

the Court. Of course, PW-1 is none else than the sister's son of the deceased. Pws. 4 and 5 are son and daughter of the deceased. The fact that

the other two eye witnesses viz., Pws. 2 and 3 turned hostile, would not in any way affect the testimonies of these witnesses if this Court comes to

the conclusion that they have spoken truth. Of course, they are closely related to the deceased. Simply because they are closely related, this Court

need not entertain suspicion and all that is required is that the testimonies of those witnesses have to be examined with care and caution.

10. As far as PW-1 is concerned, it has to be seen that he has sustained an injury. He was first seen by the Doctor at about 2.30 p.m. on

6.11.1997. Ex.P-22 is the original wound certificate. In the said certificate, the Doctor has described the injury as under,

A lacerated wound 3" x 1" x 1 1/2" on the right side frontal region.

The Doctor in the Ariyalur referred him to the Casualty at the Tanjore Medical College Hospital on the same day. Thereafter, he was treated at

the hospital at Tanjore. PW-19 is the Doctor attached to the Government Hospital, Ariyalur, who first saw PW-1 and PW-13 is the Doctor

treated him at the Tanjore Medical College Hospital. It is relevant to point out that to both these Doctors, the defence has not put any suggestion

that the injury could have been a self-inflicted one. Both the Doctors have opined that the injury could have been caused in the manner spoken to

by the witnesses. That apart, the presence of PW-1 at the scene of occurrence cannot be doubted. He is closely related to the deceased. Naturally

when there was a Panchayat concerning the daughter of the deceased, he also was present and thereafter he along with the deceased went to

Subramania Padayachi's house. Or in other words, here is an injured witness and in the absence of any compelling reasons pointed out by the

defence, this Court cannot reject his testimony.

11. Similarly, coming to Pws. 4 and 5, as already mentioned they are son and daughter of the deceased, respectively. The deceased came all the

way to the village to seek redressal for his daughter and only because of this, a Panchayat was held. The presence of daughter and son in the

Panchayat is quite natural. Similarly, immediately after Panchayat, they went to see Subramania Padayachi, an elderly gentleman of that village and

there is nothing unusual and unnatural in son and daughter also accompanying the deceased. It was there, the occurrence took place. We have

carefully examined the testimonies of these witnesses and we do not find anything to discredit their testimonies. Thus, the testimonies of Pws. 1, 4

and 5 would amply prove the motive for the accused to attack the deceased and

that an occurrence took place in which the deceased and PW-1 got injured.

12. The next question is whether the occurrence took place exactly in the manner as alleged by these witnesses. We intend to first take up as to whether A-3 to A-5 and A-7 were present at the time of occurrence.

The overt acts attributed to A-3 to A-5 is that they beat the deceased on various parts of the body. Again, we have to point out that there are

contradictions when we compare Ex.P-1 with the evidence of Pws. 1, 4 and 5 with regard to the exact part of the deceased on which they

attacked. In fact, one witness (PW-1) would even go to the extent of saying that the attack was on the head of the deceased and that does not find

a place in Ex.P-1. In the post mortem certificate Ex.P-24, the Doctor had not noticed injuries on the body of the deceased. Inasmuch as the

Doctor did not notice any injury on the body of the deceased other than head, we have to necessarily entertain serious doubt about their presence.

Once we entertain serious doubt, necessarily it follows that the benefit of doubt should go to these accused.

As far as A-7 is concerned, he has been implicated in the F.I.R. so also by Pws. 4 and 5. The allegations against this accused is that he beat PW-

1. Strangely, PW-1 in his evidence has not implicated this accused. When the injured witness himself has not implicated this witness, it would not

be safe to come to the conclusion that this accused attacked PW-1. In this view of the matter, we are inclined to give the benefit of doubt to A-7

also.

Thus, we find A-3 to A-5 and A-7 are to be held not guilty for the death of the deceased or attack on PW-1.

13. Then we are left with A-1, A-2 and A-6. First let us proceed to consider A-6. It has to be seen A-6's name finds a place in Ex.P-1. All the

witnesses including the injured PW-1 categorically stated that he attacked PW-1 with stick. As we have already pointed out, PW-1 sustained the

injury during the occurrence cannot be doubted. There is no suggestion from the defence that this injury could have been self-inflicted. Hence it has

to be held that this accused caused injury on PW-1. Considering the fact it is only a simple injury, we are of the view that the sentence of six

months rigorous imprisonment imposed by the learned Sessions Judge, is not

called for. It appears A-6 was in jail for one month. According to us this is sufficient since he has also paid a fine of Rs. 500/-.

14. As far as A-1 and A-2 are concerned, the prosecution case is A-1 beat the deceased on the head with spade handle while A-2 with

Nunastick. The deceased has sustained as many as four injuries, which we have already referred to. The learned counsel appearing for the

appellant contended that from the facts and circumstances of the case it could well be seen that the offence would not fall u/s 302 I.P.C. and that

they acted in a heat of passion upon a sudden quarrel and without any pre-meditation and that they had committed only a lesser offence.

15. As could be seen from the evidence of PW-4, the Panchayat was over by 9.30 a.m. It is not as if in villages the parties immediately after

Panchayat would disburse and go back to their respective places/villages to resume their work. Probably, after the Panchayat, the prosecution

party slowly moved and went to the garden of Subramania Padayachi, which is two furlongs away from the place of Panchayat. By the time they

reached there, it can be presumed that it should have been 10.15 a.m. or so. As Subramania Padayachi was not there, they were sitting and

chatting with Pws. 2 and 3. According to the prosecution, the accused came there at that time and questioning the deceased, attacked him. But if

we carefully see the evidence of PW-4, he has stated that before the attack, there was a wordy quarrel. To quote the exact words, PW-4 in the

cross examination stated,

.... vjp;hpfs; vd; mg;ghit mog;gjw;F Kd;g[ tha;jfuhW ...

Secondly, what is to be noted is PW-1 in the cross examination stated that these accused did not bring any stick when they came and they took

the sticks that was available at that time at that place. To quote the exact words, PW-1 has stated,

... tUk;ngHJ vjphpfs; Rk;khjhd; te;jhh;fs;. thiHj;njhl;l;j;ppypUe;Jjhd; , e;j fHpfs vLj;jhh;fs;. ...

Again, if we look at the evidence of PW-4, in the cross examination he has stated as under,

... eh";fs; cl;fhh;e;J ngrpf;bfhz;oUe;j , lj;jpy; thiHj;njhg;g[ , Ue;jJ. gf;fj;jpy; Ezh fHpia mLf;fp tr;rpUe;jhh;fs;. ...

From this, it is clear that the accused accidentally met the deceased and they

were not armed and they took the stick and attacked the deceased and before the attack, there was wordy quarrel between the parties. The learned counsel appearing for the appellants contended that the prosecution had not proved that the injuries on the head of the deceased should have been caused by both A-1 and A-2. If the case of the defence is that the injury on the head of the deceased could have been caused by a single attack by A-1, the defence should have elicited the same by putting necessary questions to the Doctor. In the absence of this, it has to be presumed that A-2 also beat on the head particularly when we notice four injuries found by the Doctor and noted in the post mortem certificate and both of them caused the said injuries. In the facts and circumstances of the case, we are of the view that A-1 and A-2 committed an offence u/s 304 Part I I.P.C. and sentence of seven years rigorous imprisonment would meet the ends of justice.

16. In the result,

(a) C.A. 699 of 2000 is allowed. The conviction and sentence imposed on the appellants/A-3 and A-4 are hereby set aside. Appellants/A-3 and

A-4 are acquitted of all the charges framed against them. The fine amount paid by them shall be refunded to them.

(b) C.A. 753 of 2000 is partly allowed. The conviction and sentence imposed by the Sessions Judge on A-1, A-2, A-5 to A-7 are hereby set

aside. The fine amount paid by A-5 and A-7 shall be refunded to them. A-1 and A-2 are convicted u/s 304 Part I I.P.C. and sentenced to

undergo seven years rigorous imprisonment, instead of the conviction u/s 302 I.P.C. A-6 is convicted u/s 323 I.P.C and the sentence is reduced to

the period he had already undergone.