

(1993) 04 SC CK 0018

In the Supreme Court Of India

Case No : Criminal Appeal No's. 518 of 1982

Kathavan Survai and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

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

Citation : (1993) 3 JT 480

Hon'ble Judges : K. Jayachandra Reddy, J;G.N. Ray, J

Bench : Division Bench

Advocate : R.K. Garg and D.K. Garg, for the Appellant; K.V. Venkataraman and K.V. Viswanathan, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—These two appeals arise out of the judgment passed by the High Court of Madras on February 5, 1982 in Criminal Appeal No. 323 of 1979. By the aforesaid judgment the High Court set aside the order of acquittal passed by the learned Sessions Judge, Madurai, in Sessions Case No. 121 of 1977 and convicted Appellant Nos. 1 to 3 u/s 302 IPC in Appeal No. 513 of 1982 and also convicted the Appellant Madhavan u/s 302 IPC in Criminal Appeal No. 65 of 1983 and sentenced each of them to undergo imprisonment for life. The order of acquittal passed against accused No. 5, Irujayce, was, however, confirmed and the order of acquittal against the other accused persons u/s 147 and 148 IPC was also affirmed by the High Court. It may be mentioned here that against the order of acquittal passed against all the accused persons by the learned Sessions Judge, the State of Tamil Nadu preferred Criminal Appeal No.323 of 1979 before the High Court of Madras and the complainant, Kandaswamy, son of the deceased moved a Revision Petition being Criminal Revision Case No.439 of 1978 before the High Court and both the said Criminal Appeal No.323 of 1979 and Criminal Revision Case No.439 of 1978 were disposed of by the common judgment passed by the High Court on February 5, 1982.

2. The prosecution case in short is that on August 28, 1977 at about 11.30.A.M., the appellants formed an unlawful assembly at a village Varichur and committed the offence of rioting and also caused the death of one Ramaswami Pillai. It was alleged that the accused Nos. 1 and 2, namely, the appellants Nos. 1 and 2 in Appeal No. 518 of 1982 stabbed the deceased, Ramaswami with knives and the accused No.3, namely, appellant No.3 in Appeal No. 518 of 1982 and the accused No.4, namely, appellant in Criminal Appeal No.69 of 1983 also caused injuries to the deceased by cutting him with billhooks. The accused No.5 who was the wife of accused No.1 was however, acquitted by the learned Sessions Judge from the charge of rioting and murder and such order of acquittal was affirmed by the High Court. The case of the prosecution was that the deceased, Ramaswami, was residing at Madurai and he had a flourishing trade in textiles in the name of 'Kandan Textiles'. The said Ramaswami had two wives and from first wife he had four sons and Kandaswami, complainant and P.W.13, was the eldest. The second wife, Rajammal, was living at the village Varichur. Apart from the said business activities, Ramaswami had begun purchasing lands in a big way and by that process came in conflict with accused Nos.1 and 3 because Ramaswami purchased the lands cultivated on lease by the said accused Nos.1 and 3 and he dispossessed them. After purchasing the said lands from the owner thereof, namely, Rahman Bibi, Ramaswami took proceedings in Court and got the first accused evicted and took possession of leasehold lands held by accused No.1 through Court on June 25, 1976 and since then he was having personal cultivation of the entire extent of 26 acres land purchased from Rahman Bibi. The suit for possession filed by accused No.1 against Ramaswami in the sub-Court of Madurai was dismissed and the suit filed by Ramaswami for dispossession of the said land against the first accused was decreed. The appeal preferred by the first accused was also dismissed. The third accused was also cultivating two acres of land in Edayapatti village. The said land belonged to one Subbaraj and Ramaswami purchased the said land in the name of his son Kandaswami on August 27, 1974 and the lease in favour of the third accused in respect of the said land was terminated and Ramaswami was given possession of the vacant land. The third accused claimed protection under the tenancy law and moved various applications in Court but failed in his attempt and Ramaswami was said to have been personally cultivating the lands also at the time of occurrence. The accused Nos. 1 to (sic) their supporters tried to trespass on (sic) lands in village Edayapatti and (sic) the crops and two cases were registered against the accused persons for trespass and dacoity at the instance of Ramaswami but the said accused persons were acquitted in Sessions Case Nos. 166 and 167 of 1975 in the Court of Sessions Judge, Madurai. The third accused also lodged complaint against Ramaswami for removal of crops unauthorisedly but such case ended in acquittal. In view of these litigations and dispossession of the said accused persons, the accused Nos. 1 to 3 bore grudge against Ramaswami and became inimical towards him. As a matter of fact, Ramaswami also made application to the police authorities inter alia stating that he apprehended danger to his life at the hands of accused Nos.1 to 3 and he should be given police protection. The

police authorities enquired and warned the accused persons to keep peace.

3. The prosecution case is that in view of such bitter relation, the murderous attack on Ramaswami Pillai was made on August 28, 1977. Further case of the prosecution was that on the morning of August 28, 1977, Ramaswami took his breakfast and left for Varichur where the lands purchased from Rehman Bibi were situated. He went by his car No. MDA 5742 driven by his Driver, P.W. 1. After reaching the land, Ramaswami inspected the land and the well which was being dug. His employees, P.W. 5 Thavasimuthu and Bose were at the land and they told him that the seedlings had been raised and fertilizer was required to prepare the paddy field. Ramaswami having learnt from Bose that the Cooperative Society at Varichur was open on that day and urea and manure were being distributed to the members, he directed P.W. 5 and Bose to go to his second wife's house at Varichur and bring a cart to the society to transport the urea bags and also informed them that in the meantime he would come by car to the Society. P.W. 5 and Bose thereafter left for Varichur by village road and Ramaswami proceeded by car to Varichur. The car was parked near the well on the southern side of Madurai Sivaganga Road. Ramaswami went to the Cooperative Society followed by P.W. 1. Though it was a Sunday, the Cooperative Society was kept open by P.W. 2, Thiru Sethuraman, the Supervisor-Secretary, as he wanted to clear off the arrears of work. For the said reason, P.W. 2 asked P.W. 3 Maduraiveeran, the attendant and P.W. 4, Karunakaran, the Salesman of the Society, to come and render service. P.W. 8, Guruswami. Madaliar, a villager and member of the Society, also went to the Society at about 10.30 a.m. on that day to purchase some manure for his lands at Varichur and in his presence Ramaswami came to the Society and also placed an order for some bags of urea. After purchasing the manure bags, P.W. 8 left, Ramaswami left the said urea bags at the Society's premises saying that his employees would bring a cart and remove the bags of urea. Ramaswami thereafter proceeded towards his car followed by his driver, P.W. 1. Just as Ramaswami was getting into the Madurai-Sivaganga Road, accused Nos. 1 and 2 came suddenly from the West and pushed down Ramaswami to the ground. The first accused then stabbed Ramaswami with a knife on his abdomen. The accused Nos. 3 and 4 also came running each armed with bill-hooks. The driver thereafter raised alarm. Hearing the alarm. P.W. Nos. 2 to 4, namely, the secretary-salesman and the attendant of the Co-operative Society also came running out of the premises to see what had happened. At the instance of the first accused the accused Nos. 3 and 4 cut Ramaswami with bill hooks on his arms and legs indiscriminately. The second accused also stabbed Ramaswami with knife. The said murderous assault was witnessed by the driver, P.W. 1, and the said other witnesses, namely, P.W. 2 and 4. Such incident was also witnessed by P.W. 5 and Bose who by that time reached the well with cart. Thereafter, the accused persons left the said place. Ramaswami succumbed to the injuries at the place of occurrence. P.W. Nos. 2 to 4 thereafter returned to the Society and the driver went back to the house of Rajammal, second wife of Ramaswami, to inform her about the occurrence.

Thereafter, he went to the house of village Munsiff but he was out of the town but the village Karnam. P.W. 9 was present there and recorded the statement given by the driver, P.W. 1 at about 12 noon, and he proceeded to the scene of occurrence and also saw the dead body of Ramaswami. He thereafter sent the statement and his own report to the Madurai Police Station.

4. It is also the prosecution case that the accused Nos. 2 to 4 after leaving the scene of occurrence ran to the house of P.W. 12, Thangavel Ambalam, the President of the Panchayat and demanded of his wife P.W. 11, Kaliasammal as to where her husband was. At that time, the President was away at Madurai and his wife, P.W. 11, was alone. P.W. 11 noticed the second accused holding a knife and the other two accused holding bill hooks and their clothes as well as the weapons carried by them were stained with blood. After making a cursory search, the accused remarked that P.W. 12 was not at home and left the house and warned P.W. 11 that they had just finished Ramaswami and one day or the other the President, P.W. 12 would also meet with similar fate. P.W. 11 became completely unnerved by such threat and when P.W. 12 returned home at about 7.00 P.M. she told him about the intrusion of accused 2 to 4 and the threat held by them.

5. Inquest was held by the police and the dead body was sent to the government hospital for autopsy. Blood stained earth was seized from the place of occurrence. The bills issued by the Cooperative Society for the sale of urea bags to Ramaswami and also to P.W. 8 were also seized by the police. It appears that the accused No. 2 was examined by P.W. 6, Dr. Chandrakanth at 2.40 P.M. on August 28, 1977 and the doctor noticed some injuries stated to have been sustained by him by being cut with bill hook (aruval). A cut injury on the left hand ring finger and suspected fracture of head of 4th metacarpal bone and the cut injury on the right leg were noted by the doctor. P.W. 7 held the post mortem examination on the dead body of Ramaswami and found 27 injuries which were either cut injuries or stab injuries and out of such injuries 11 injuries were quite serious in nature. 100 ml. of grey coloured fluid was found in the stomach of the deceased and the doctor holding the post mortem was of the view that the injuries were grievous in nature and injuries Nos. 10, 17, 18, 24 and 27 were individually sufficient in the ordinary course of nature to cause death.

6. Accused Nos. 1.3 and 4 surrendered before the Judicial Second Class Magistrate, Melur and 5th accused was also arrested at Madurai. The first accused stated when examined u/s 313, Code of Criminal Procedure that he did not know anything about the purchase of land from Rahman Bibi and he and the 3rd accused cultivated leasehold lands and he was not dispossessed from the lands and the delivery effected through Court was only in papers. He also stated that there was enmity between Ramaswami and added that on account of such enmity the prosecution witnesses had deposed falsely against him. He also stated that he was not in the village on the date of occurrence. The second accused stated that on the date of occurrence when he was going along Varichur Sivaganga Road, he noticed Ramaswami getting into his car and Ramaswami

abused him and he protested for such abuse. Thereafter, Ramaswami directed his driver, P.W. 1, to cut him and immediately P.W. 1 attempted to cut him but he warded off the cuts and by that process he sustained injuries on his hand and by that process he sustained injuries on his hand and leg which as aforesaid were examined by the doctor. He said that he made a complaint to the Police Station but the original complaint was lost and a fresh report had been prepared. The third accused stated that on the day of occurrence, he was not in the village and he had been to village Karun-galakudi to see the new born child of his daughter. The 4th accused who was the wife of the first accused stated that she was falsely implicated because she was closely related to the first accused. The accused persons did not examine any defence witness in support of their plea of innocence.

7. The learned Sessions Judge, however, came to the finding that the offences against the accused persons had not been proved beyond doubt and they were entitled to the benefit of doubt. Accordingly he acquitted all the accused. As aforesaid, the State preferred an appeal and the complainant, namely, the son of the deceased moved a revision petition before the High Court of Madras.

8. The Division Bench of the Madras High Court analysed the prosecution case and the evidences adduced by the parties in detail and each finding of the learned Sessions Judge was taken into consideration by the High Court. The High Court inter alia came to the finding that the death of Ramaswami was homicidal in nature and the place of occurrence did not admit any doubt. Injuries found on the person of the deceased were in conformity with the evidences adduced by the eye-witnesses. The injuries found on the person of the accused No. 2 could have been caused by the bill hooks and the High Court was of the view that when the accused persons were causing injuries on the deceased, the accused No. 2 got hurt either on his own account or by the other co-accused in the process of inflicting multiple injuries on the deceased. The High Court was also of the view that grey fluid in the stomach of Ramaswami did not support the prosecution case that he left his house at 9.30 A.M. after having breakfast. The High Court was of the view that the learned Sessions Judge was wrong in holding that light breakfast would take two to three hours for digestion. The High Court was also of the view that the presence of witnesses 2 to 4 and also 5 could not be disbelieved and although the Cooperative Society used to be kept closed on Sunday but on the day of occurrence the Society was kept open to clear the arrears of work and urea bags were sold not only to Ramaswami but also to P.W. 8. Hence, the employees of Cooperative Society were present at the Society and they had occasions to see the assault on Ramaswami. The High Court also noted that P. Ws. 2 to 4 were independent witnesses and they were not obliged in any manner to depose falsely at the suggestion of the complainant. The High Court also did not accept the case of the accused that the said witnesses were inimical to the accused persons and their evidences were not to be accepted. The High Court had also taken into consideration the correction of the date in the bills for selling urea by the Cooperative Society. The explanation offered by P.W. 4 that

while preparing the bills, the date was wrongly put but subsequently corrected was accepted by the High Court. The High Court also noted the evidence of P.W. 11, the wife of P.W. 12 Panchayat President, who had deposed to the effect that the second accused enquired about her husband and stated that they had just finished Ramaswami and her husband would also meet the same fate.

9. The case sought to be made out by the accused that the said murderous assault by the said persons should have been witnessed by the independent villagers and absence of such villagers as prosecution witnesses only indicated that the prosecution was holding back the truth from Court, was also not accepted by the High Court. It was pointed out by the High Court that from the evidence of P.W. 4, it transpired that there was no residential house within calling distance from the scene of occurrence and the incident had taken place at about noon time when most of the villagers would have gone for the work in the fields. Considering the prosecution case and the evidences adduced by the parties and also after taking into consideration every finding made by the learned Sessions Judge, the High Court came to the finding that there was no justification whatsoever for the Sessions Judge to hold that the case against accused Nos. 1 and 4 had not been proved beyond doubt. The High Court indicated that there were convincing evidences to prove the murder caused by the accused Nos. 1 to 4 and in that view of the matter, the High Court convicted the accused Nos. 1 to 4 on a charge of murder u/s 302 IPC and sentenced them to imprisonment for life. The order of acquittal passed against accused No. 5, wife of accused No. 1 was upheld by the High Court and the acquittal of the accused persons on the charge of rioting and trespass was also upheld by the High Court.

10. Learned Counsel appearing for the Appellants has strenuously contended that the learned Sessions Judge had discussed the evidences in detail and had given reasons for the finding that the prosecution case was not proved beyond reasonable doubt. The lacuna in the evidences was highlighted by the Sessions Judge and such finding being based on reason and not being perverse should not have been interfered with by the High Court in appeal against the order of acquittal. Learned Counsel has contended that where the Sessions Court gives cogent reasons for its finding and such finding is not perverse or wholly unreasonable, the High Court in disposing of the appeal should not embark on assessing the evidences independently and take a different view. If the view taken by the learned Sessions Judge is a possible view, interference against the judgment of acquittal is not called for. He has, therefore, submitted that the order of acquittal should be upheld by this Court by allowing the appeals.

11. We are, however unable to accept such contention of the learned Counsel for the Appellant. It is not the correct position in law that the appellate Court is precluded from assessing the evidences in an appeal arising out of the judgment of acquittal. It may be indicated herein that in *Ganesh Bhavan Patel and Another Vs. State of Maharashtra*,) it has been held by this Court that although in an appeal from an order of acquittal the powers of the High Court to re-assess the

evidence and to reach its own opinion are as extensive as in an appeal against the order of conviction, yet as a rule of prudence, it shall give always proper weight and consideration to such matters, namely, (1) the views of the trial Judge as to the credibility of the witnesses (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial (3) the right of the accused to the benefit of any doubt and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. It has been indicated by this Court that as a matter of prudence, where two reasonable conclusions can be drawn on the evidences on record, the High Court as a matter of judicial caution, shall refrain from interfering with the order of acquittal recorded by the Court below. It may, however, be indicated that this Court has also indicated in various decisions that if the finding made by the trial court is against the weight of the evidence and the view taken by the trial court is unreasonable, the appellate court will be justified in rejecting such unreasonable finding made by the trial court which are against the weight of the evidence adduced in the case and the Court of appeal will be quite competent to set aside the order of acquittal and convict the accused.

12. We have carefully considered the judgment of the learned trial Judge and also of the High Court, in appeal. It appears to us that the High Court has taken pains in analysing the evidences in detail, by adverting to each and every finding made by the trial court and has given cogent reasons for not accepting the finding made by the Sessions Judge in holding that the prosecution case was not proved beyond doubt. In our view, the prosecution case was proved by a number of eye-witnesses and there was no justification to hold that the accused persons were entitled to the benefit of doubt. We, therefore, find no reason to interfere with the judgment impugned in these appeals and the appeals are, therefore, dismissed. The Appellants since convicted by the High Court have been enlarged on bail by this Court. They should, therefore be taken into custody to serve out the sentence imposed on them. It is noted that Appellant No. 3 in Criminal Appeal No. 518 of 1982 being dead the appeal stands abated so far as the said Appellant is concerned.