
(2007) 07 MAD CK 0244

In the Madras High Court

Case No : Criminal Appeal (MD) No. 768 of 1999

Samayal Ravi @ Ravichandran

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 427

Citation : (2007) 07 MAD CK 0244

Hon'ble Judges : T. Sudanthiram, J;D. Murugesan, J

Bench : Division Bench

Advocate : V.K. Muthuswamy for V. Bharathidasan, for the Appellant; S.P. Samuel Raj, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The appellant (A-1), who was tried along with five other accused (A-2 to A-6), stands convicted in S.C. No. 213 of

1995 on the file of the learned II Additional Sessions Judge, Thanjavur for the offences u/s 302 IPC (2 counts), Section 307 IPC (2 counts) and

Section 427 IPC and sentenced to undergo imprisonment for life for each count and to pay a fine of Rs. 3,000/- for each count, in default to

undergo rigorous imprisonment for two years for the offence u/s 302 IPC, to undergo rigorous imprisonment for seven years for each count and to

pay a fine of Rs. 2,000/- for each count, in default to undergo rigorous imprisonment for one year for the offence u/s 307 IPC, to undergo rigorous

imprisonment for one year for the offence u/s 427 IPC and that the sentences are to run concurrently. The other accused (A-2 to A-6) were

acquitted of all the charges framed against them. The appellant has preferred the above appeal challenging the conviction and sentence imposed on

him by the trial Court.

2. The case of the prosecution can be briefly summarized as below:

There was previous enmity between two groups of residents of Aanaivizhundan Street for over two years prior to the date of occurrence. One

group was led by one V.K.T. Bharathi and the other group was led by one Nadimuthu, the brother of the appellant, and the other accused were

the friends of the appellant belonging to the same group. On 20.4.95 at about 2.30 p.m., ten persons belonging to V.K.T. Bharathi group

murdered the said Nadimuthu, the leader of the other group. In order to take revenge, the appellant and the other accused had planned to murder

the persons belonging to the rival V.K.T. Bharathi group.

3. P.W. 1 is the son of the first deceased by name Murugaiyan and is a resident of Vandipettai village in Pattukkottai. He was working in a lottery

ticket shop at the relevant point of time. On the date of occurrence i.e., on 20.4.95 at about 2.45 p.m., a group of people were standing in

Aanaivizhundan Street. The father of P.W. 1 viz., the first deceased Murugaiyan, left the house and was standing in front of Amirthalingam

Coconut shop, which was situate in the road corner. At that time, one mini van named Suganya with Regn. No. TN-49-A-2553 came speedily in

the opposite direction. The said van was driven by the appellant herein and the other accused were sitting on the top. The other accused viz., A-2,

A-4, A-6 & A-5 told the appellant that the father of Thangadurai who murdered Nadimuthu was standing there and asked the appellant to run

over and kill him. The appellant thereafter dashed the van on the father of P.W. 1. P.W. 1, who was standing nearby, saw the van dashing on his

father. P.W. 1's father sustained injuries on his head and he died on the spot. As the mini van did not stop and was fast moving, P.W. 1 chased the

van in a bicycle. One Muthu another deceased was going in a bicycle along with P.W. 5 Ravichandran sitting at the back near Rajamani Theatre.

At that time the other accused told the appellant that Packiam Nagar Ravichandran who murdered Nadimuthu was sitting at the back of the cycle

as a pillion rider and asked the appellant to run over him. Hence, the appellant dashed the van on the bicycle. Though P.W. 5 Ravichandran

jumped and escaped from that place, the rider of the bicycle Muthu, the second deceased, sustained injuries and died on the spot. The appellant

had driven away the van from the place of occurrence. Thereafter, P.W. 1 went to Pattukkottai Police Station and lodged the complaint, Ex. P-1

before P.W. 15, the Sub Inspector of Police.

4. P.W. 15, the Sub Inspector of Police, on receipt of the complaint, Ex. P-1 at 3.45 p.m., registered a case in Cr. No. 456 of 1995 for the

offence u/s 302 IPC. The printed First Information Report is Ex. P-11. He sent the express copies of the First Information Report to the Court

and to the Inspector of Police, P.W. 16, at 4.15 p.m. for further investigation.

5. P.W. 16, the Inspector of Police, on receipt of the express First Information Report from P.W. 15, went to the scene of occurrence where the

first deceased was murdered at 6.45 p.m., and prepared an observation mahazar, in which P.W. 14 and one Veerappan signed as witnesses and

also drew a rough sketch, Ex. P-12. He collected the bloodstained earth, M.O.1 and sample earth, M.O.2 under a mahazar, Ex. P-9 attested by

witnesses at 7.00 p.m. He conducted inquest over the body of the first deceased Murugaiyan at 8.45 p.m., in the presence of Panchayatdars and

recorded their statements. The said inquest report is Ex. P-13. Thereafter, he sent the body of the first deceased through Grade I Constable along

with the relevant requisition to the Government Hospital, Pattukkottai for conducting autopsy. Thereafter, he went to the scene of occurrence

where the second deceased Muthu alias Muthukumar was murdered and prepared an observation mahazar, Ex. P-8 and also drew a rough

sketch, Ex. P-14. He collected the bloodstained earth, M.O.3 and sample earth, M.O.4 under a mahazar, P-10 attested by witnesses. He

conducted inquest over the body of the second deceased Muthu alias Muthukumar in the presence of Panchayatdars and recorded their

statements. He completed the inquest at 11.30 p.m., and the said inquest report is Ex. P-15. Thereafter, he sent the body of the second deceased

through Grade I Constable along with the relevant requisition to the Government Hospital, Pattukkottai for conducting autopsy.

6. P.W. 9, Assistant Surgeon, Government Hospital, Pattukkottai, on receipt of the requisition and the body at 9.30 p.m. on 20.4.95, commenced

post-mortem on the body of the first deceased at 11.15 a.m., on 21.4.95 and found the following external injuries:

(1) A lacerated wound over the left side of head and face. The skin over the

above area was absent.

(2) The left ear was lacerated the head shape was flat and covered with dried blood.

(3) The left shoulder was swollen and the joint was dislocated.

(4) Abrasion 4" x 3" over the left knee, left elbow, left wrist.

(5) Abrasion 4" x 3" over the right knee.

(6) Abrasion 4" x 3" over the right elbow.

(7) Abrasion 4" x 3" over the right side of buttock.

(8) Abrasion 3" x 2" over the both foot over the dorsum.

He issued the post-mortem certificate, Ex. P-5 with his opinion that the first deceased would appear to have died of shock and haemorrhage due

to the injury sustained, 18 to 24 hours prior to post-mortem.

7. P.W. 8, Civil Surgeon, Government Hospital, Pattukkottai, on receipt of the requisition and the body at 10.45 p.m. on 20.4.95, conducted

post-mortem on the body of the second deceased between 12.30 p.m., and 1.30 p.m., on 21.4.95 and found the following antemortem injuries:

(1) A contusion with an abrasion involving the right forehead, right cheek and right neck lateral.

(2) An abrasion of 6 cm $\ddot{\text{z}}$ 6 cm on the right knee front.

(3) A lacerated wound of 2 cm $\ddot{\text{z}}$ 2 cm on the right ankle antero medial aspect.

(4) An abrasion of 2 cm $\ddot{\text{z}}$ 2 cm on the left (NC) front.

(5) An abrasion on the left upper limb involving the lower half of the arm and upper half of the forearm back.

(6) An abrasion of 6 cm $\ddot{\text{z}}$ 6 cm on the left shoulder lateral.

(7) An extensive abrasion involving the left entire buttock.

(8) An abrasion of 3 cm $\ddot{\text{z}}$ 2 cm on the left scapular area on the horizontal plain.

(9) An extensive abrasion on the left intra loin.

(10) Fracture ribs right 5 to 8.

(11) Right lung middle lobe ruptured into multiple pieces with 500 ml of blood on the right pleural cavity.

(12) Left clavicle fracture in the middle.

(13) Left first rib fractured.

(14) A lacerated wound of 5 cm $\times$ 2 cm $\times$ 2 cm on the right lobe of liver upper posterior surface, with surrounding haematoma.

(15) Left body of the sphenoid and ethmoid bones fractured into pieces.

(16) Maxilla both fractured into a separate piece single.

(17) Mandible fractured into two pieces at the left Incisor and canine tooth.

He issued the post-mortem certificate, Ex. P-4 with his opinion that the second deceased would appear to have died of shock and haemorrhage

due to multiple injury, 18 to 26 hours prior to concluding time of post-mortem.

8. P.W. 16, the Inspector of Police, examined the witnesses Ravichandran & Moorthy and recorded their statements on 21.4.95. He arrested A-4

and A-5 near Palayam ITI and recorded their statements at about 11.30 a.m., on 22.4.95. He came to the police station at about 12.30 p.m., and

sent them for remand. He seized the mini van under a mahazar, Ex. P-2 attested by witnesses at about 10.00 a.m., on 23.4.95 near Kattatru

bridge. Thereafter, he sent the seized van to the Motor Vehicle Inspector for making report. He arrested A-2 near Aradikkumunai at about 11.30

a.m., on 24.4.95. He came to the police station at 12.30 p.m., and remanded A2 to judicial custody. He examined the other witnesses on 25.4.95

& 26.4.95 and recorded their statements. He examined the post-mortem doctors on 29.4.95 and recorded their statements. He examined the Sub

Inspector of Police and the Grade I constables on 30.4.95 and recorded their statements. He received information on 9.5.95 that the appellant had

surrendered before the Court at Chennai. He examined the doctors P.Ws. 10 to 12 on 4.8.95 and recorded their statements. He also seized the

material objects M.Os.1 to 5 under the mahazar. After completing the investigation in the case, he laid the final report on 25.8.95 before the Court

for the offence as stated above.

9. When the accused were questioned u/s 313 Cr.P.C., as to the incriminating circumstances appearing against them, they denied them as false.

No witness was examined and no document was marked on their side.

10. Before the trial Court, the prosecution, in order to prove its case, had examined P.Ws. 1 to 16, marked Exs.P-1 to P-15 and M.Os.1 to 5.

The learned Sessions Judge, after trial, convicted and sentenced the appellant

alone for the offence as stated above, and acquitted the other accused of all the charges. Hence this appeal.

11. Mr. V.K. Muthusamy, learned Senior Counsel appearing for the appellant by way of challenge to the impugned Judgment, strenuously

contended that the entire occurrence had taken place only in the right of private defence. According to the learned Senior Counsel, there were two

rival rowdy groups one under the leadership of Nadimuthu and another under the leadership of Barathi and the said Nadimuthu was murdered just

15 minutes before the date of occurrence on the relevant date and the persons murdered the said Nadimuthu came in a group and in an attempt to

escape from them, the accused had to drive the van and in the process, the occurrence had taken place. Learned Senior Counsel would also

submit that the group came only to attack the accused and as a result of which, they damaged all over the van and only in order to escape from the

rival group, the accused drove the van and in that process, two persons sustained injuries, to which they succumbed.

12. To hammer the above point, learned Senior Counsel took us extensively to the evidence. We have also heard the learned Additional Public

Prosecutor.

13. Even as per the prosecution case, it is apparent that there were two rival rowdy groups in Aanaivizhundan Street at Pattukkottai. On

20.04.2005 at about 02.30 p.m., persons belonging to Bharathi group attacked Nadimuthu and murdered him. The occurrence in question had

taken place just 15 minutes thereafter, and that too within 200 meters from the place of the occurrence. To apprise the submissions of the learned

Senior Counsel, we are inclined to refer to first the evidence of P.Ws 5 and 13 as they are independent witnesses. P.W. 5 is a person, who had

already sustained injuries in the earlier occurrence. He identified the accused. According to his evidence, the accused had driven the van in a rash

manner. The accused 2 to 6 had instigated the accused to run P.W. 5 as he was the brother of Thangadurai, who said to have murdered the said

Nadimuthu. His evidence shows that immediately on the van dashed, he jumped out of the bicycle, but the rider of the bicycle Muthu was killed in

the said occurrence. P.W. 13 another independent witness had also spoken about the accused driving the van and hit him and caused injuries. The

fact that the van in question was driven by the accused is well established by the evidence of above two witnesses.

14. P.W. 1 though happens to be the son of the first deceased, he has also spoken to the fact that the accused was driving the van when the accused 2 to 6 were sitting at the top of the said van. At the instigation of Accused 2 to 6, the accused had driven the van in a manner only to hit the father of P.W. 1. He has also spoken that A-1 did not stop the vehicle with that, but had continued to drive the van and in the process, he also hit P.W. 13 and finally hit the bicycle driven by Muthu, when P.W. 5 was a pillion rider. P.Ws. 2 and 3 have also spoken to the manner in which the occurrence had taken place.

15. The bone of contention in attacking the finding of the trial court as to the guilt of the accused is that P.W. 1 and three other associates of Bharathi group came in a group running towards the van only to attack A-1 and do away him to death. Whether the said contention would be accepted or not should be considered firstly in the light of the damage found on the van. The Motor Vehicle Inspector, P.W. 7 after inspection of the van had certified the damages to the van in Ex. P.3. We find in Column 12 of Ex. P.3, the following damages:

12. Details regarding damage sustained by the vehicle or vehicles due to occurrence:

1. Front left side head light assembly damaged.
2. Front bumper for a width of 35 cm, 80 cm from right edge to an height of 40 cm to 20 cm bend and damaged irregularly.
3. Front bannet for a width of 45 cm, 45 cm from right edge to an height of 110 cm to 140 cm bend and damaged irregularly.
4. Front bannet bend and nc
5. Front nc damaged.

Though the learned Senior Counsel strenuously contended that the prosecution witnesses alone came in a group and attacked the van, there is nothing to indicate as to whether those persons had come in a group with arms. The inspection report of the Motor Vehicle Inspector Ex. P.3

indicates the damages only in front portion of the van. Though the damages viz., Front left side head light assembly damaged, Front bannet bend and nc and Front nc damaged could have been caused due to the attack by

persons, the damage Nos.2 and 3 viz., Front bumper bend and Front bannet bend could not have been caused by attack by group with weapons. The nature of damages would indicate the hit on the persons and the cycle in the manner spoken to by the prosecution. The occurrence as spoken to by the learned Senior Counsel as well as the written statement cannot be accepted for more than one reason that it is a specific case of the defence that the persons came in a group and attacked the van by surrounding the van and caused the damages on all parts of the van. This version is not supported by Ex. P.3. The Motor Vehicle Inspector has not noticed any of the damages to the van on any other portion except front portion. The damages to the van in front portion is in tune with the prosecution version that the vehicle was driven by the first accused and has dashed against the persons, who were assembled there. We may also point out that even though it is the case of the defence that all the persons in group came and attacked the van in front portion including the windscreen, the certificate issued in Ex. P.3 does not indicate any such damage to the windscreen.

16. The next question that arises for consideration is whether the prosecution has established its case as to implicating the accused for the offence

u/s 302 I.P.C. In the first occurrence that took place on 20.04.1995 at 02.30 p.m., the brother of the accused Nadimuthu was murdered by a

group of persons and of course 11 accused were tried and all them were acquitted and there is no appeal by the State. But, as per the prosecution

case, as could be seen from the evidence of P.Ws. 1 to 3, after the said occurrence at 02.30 p.m, the same group left the scene of occurrence. In

the mean time, the accused, who is the brother of deceased came to know that his brother was attacked, had no reason to take the van to reach

the scene of occurrence, which is 200 meters from the place of occurrence where his brother was murdered. Though an attempt was made by the

defence that he had come from some distant place, considering the time factor of 15 minutes from the first and second occurrence, we are not

inclined to accept the said submission of the learned Senior Counsel in this regard. It is more probable as the prosecution has put forth that on

coming to know of the attack on the brother, the accused, who happens to be the driver of the van had picked up the van and chased the group of

persons, who had attacked Nadimuthu in general and particularly D-1, who is none other than the Father of the assailant and P.W. 5, who is also

none other than the brother of the assailant namely Thangadurai, against whom it was alleged that he committed the murder of Nadimuthu. The

sequence of events is also relevant. It is the case of the prosecution that there were group of persons and first accused had driven the vehicle and

hit only the father of the alleged accused in the earlier occurrence. Secondly, he did not stop the van at that place and he again drove the van

aiming the other bicycle where P.W. 5 was the pillion rider and the bicycle was driven by deceased Muthu, who is also a member of Bharathi

group. The way in which the occurrence was said to have been taken place as spoken to by the witnesses, cannot be considered to be one of right

of private defence especially when there is absolutely nothing to indicate that the rival group came with weapons only to attack the accused and his

colleagues, who were in the van at the relevant point of time.

17. It must be kept in mind that it is a case of retaliatory murder where the brother of the accused was murdered just 15 minutes prior to the time

of occurrence and the accused has not disputed that he drove the van. He also did not dispute that due to the occurrence, two persons died. There

is absolutely no dispute as to the presence of P.Ws. 5 and 13 in the scene of occurrence and there is no reason to disbelieve or discredit their

evidence in this regard. The intention also can be inferred from the circumstances of the case, which we have narrated earlier.

18. On the facts and circumstances of the case, we are not inclined to accept the theory of right of private defence as put forth by the learned

Senior Counsel appearing for the appellant and the defence version does not probablise any of the circumstances.

19. For all these reasons, we find no infirmity or illegality in the judgment of the trial Court in convicting and sentencing the accused. Accordingly,

the conviction and sentence is confirmed and this appeal is dismissed.