

Veluswamy and Others

Vs

State of Tamil Nadu

Muthuswamy and Others

Vs

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Criminal Appeal No. 19 and 344 of 1977

(M. P. Thakkar, A. P. Sen JJ)

04.05.1983

JUDGMENT

A. P. SEN, J.-

1. Appellant Muthuswamy and his six companions viz. Palaniappan alias Palaniswamy, Veluswamy, Masayan, Gopal, Gandhi Vel and Mylswamy stand convicted by the Madras High court under Section 302 read with Section 34 of the Indian Penal Code, 1860 by its judgment and sentences dated May 14, 1976 for having committed the murder of the deceased Katturaja alias Arumugham, a rich and wealthy landlord of pollachi, and his close friend and companion deceased Khaja Moideen, and have each been sentenced to undergo imprisonment for life. They have also been convicted under Section 148 and sentenced to undergo rigorous imprisonment for a term of three years. Both the sentences are to run concurrently.

2. These are two appeals one of which is by special leave by appellants 1, 2, 4 and 5 who had been convicted by the Sessions Judge, Coimbatore by his finding and sentence dated December 11, 1974 which have been confirmed by the High Court in appeal. The other appeal is under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 preferred by appellants 3, 6 and 7 who had been acquitted by the learned Sessions Judge on the ground that there was no reliable evidence to prove their participation in the assaults, but the High Court reversed the order of acquittal on the ground that the reasons advanced by the learned Sessions Judge were not sustainable. It must be said in all fairness to learned counsel for the appellants that he did not contend that the High Court was not justified in doing so or that interference by the High Court with the order of acquittal passed by the learned Sessions Judge was in the facts and circumstances of the present case unwarranted in the context of any special feature of the evidence peculiar to these three accused. On the contrary, the submission has been that there is total lack of legal and reliable evidence to sustain the conviction of any of the appellants under Section 3092 read with Section 34 of the Indian Penal Code or under Section 148.

3. It appears that there was a deep-rooted and long standing enmity between accused 1 Muthuswamy, who is a big landlord of village Kalipalayam and whose elder sister was married to the maternal uncle of the deceased Katturaja as he suspected that the deceased was responsible for

the murder of his father and brother. The prosecution has led evidence showing that there were several incidents and the accused Muthuswamy had a strong motive to commit the murder of the deceased. It transpires that the accused Muthuswamy tried to put up a building for a toddy shop at village Kalipalayam where the deceased was originally residing. The villagers were opposed to the setting up of the toddy shop and Muthuswamy thought that it was the deceased who had instigated the villagers. As a direct consequence of this, the accused Muthuswamy caused pelting of stones at the house of the deceased Katturaja in village Kalipalayam leading to breach of peace between the two parties and security proceedings were drawn under Section 107 of the Code of Criminal Procedure, 1973 against both the parties. The accused Muthuswamy and his companions were also prosecuted for voluntarily causing grievous hurt to one Veeran Chettiar and attempting to cause the murder of his son Subrahmanyam, both of whom belonged to the deceased Katturaja's faction. About 10 days prior to the date of occurrence, a criminal case was registered against the deceased Katturaja on the allegation that he had beaten up one Mottavyappa Mudaliar, a friend of the accused Muthuswamy. Some four days prior to the date of occurrence, a case was registered against one Kathavarayan belonging to the deceased Katturaja's party for the murder of Shanmugha Boyan belonging to the accused Muthuswamy's party. The appellants all belong to the section of accused 1 Muthuswamy. Accused 2 and 3 viz. Paliappan alias Palaniswamy and Veluswamy are read brothers and close friends of accused 1 Muthuswamy, along with accused 5 Gopal. Accused 4, 6 and 7 viz. Masayan, Gandhi Vel and Mylswamy were the employees of accused 1 Muthuswamy. The deceased Katturaja had shifted his residence to Pollachi.

4. The prosecution case in brief is as follows. The marriage of the daughter of PW 11 Kandaswamy was to be celebrated at Pollachi on May 26, 1974. As he was known to the deceased Katturaja, he had requested him to give him green coconut leaves, tender coconuts and palmyra fruits for decorating the marriage pandal. On the date of occurrence i.e. on May 24, 1974 at about 9 a.m. the deceased told PW 11 Kandaswamy that he is leaving for his garden at Naickenpalayam to make the necessary arrangements to collect the material required. It appears that the garden was being looked after by his mother PW 6 Smt. Velliammal and his brother-in-law PW 3 Durai. The deceased Katturaja left his residence at Pollachi in his two-door white Standard Herald car that morning along with his close friend and companion the deceased Khaja Moideen. On the way to the garden in village Naickenpalayam, one has to cross the house of accused 1 Muthuswamy. It appears that on seeing the deceased Katturaja going in his car towards his garden in Naickenpalayam the accused had planned to wreak their vengeance on him and had gathered inside the cattle shed in the garden of accused 1 Muthuswamy near the 1/8th km milestone and were lying in wait for the deceased. They had placed a log of wood across the road creating a road block.

5. It is pointed out in the prosecution evidence that PW 1 Masayappa Gounder, uncle of the deceased Katturaja had left his house in Kettimallapuram on his way to Pollachi to buy insecticides for his garden and he happened to be present in the garden of the deceased Katturaja at Naickenpalayam talking to PW 6 Smt. Velliammal and PW 3 Durai. At about 10 a.m. the deceased Katturaja reached the garden along with his friend the deceased Khaja Moideen in his car and left instructions with his brother-in-law PW 3 Durai to collect green coconut leaves, tender coconuts and palmyra fruits and keep them ready saying that he would send a lorry to fetch the same. At about 10.30 a.m. the deceased Katturaja left the garden with his friend the deceased Khaja Moideen seated near him and his uncle PW 1 Masayappa Gounder, seated in the rear as he wanted to go to Pollachi.

6. At about 11 a.m. the car was brought to a halt due to the road block at the 1/8th km milestone, after it had crossed accused 1 Muthuswamy's house. On seeing that the car had stopped, accused 1 Muthuswamy armed with aruval and his companions armed with bichuvas and knife emerged out of

the garden which surrounds the road at the spot on both sides. Apprehending danger, the deceased Katturaja who was at the wheel of the car and the deceased Khaja Moideen sitting beside him got out of the car and tried to escape towards the village. The deceased Katturaja was running for his life and was ahead of the deceased Khaja Moideen. The accused chased them and caught hold of the deceased Khaja Moideen on the road ahead about 125 feet away from the car while the deceased Katturaja escaped into the sugar-cane field of Masayappa Gounder about 1 1/2 furlongs away, just adjacent to the Parambikulas Aliar channel. The prosecution case is that the companions of the accused Muthuswamy dealt blows with bichuvas and knife on different parts of the body of the deceased Khaja Moideen and thereafter the accused Muthuswamy struck him on the neck with his aruval and he fell down dead. Finding that the deceased Katturaja was trying to escape, the accused Muthuswamy exhorted his companions to prevent his escape and thereupon accused 4 and 5 chased the deceased and caught hold of him inside the sugar-cane field of Masayappa Gounder. The rest followed them and joined in the assault. All the accused dealt blows with their bichuvas and knife on the deceased Katturaja who was struggling for his life and then the accused Muthuswamy arrived on the scene and cut off his neck with his aruval. After the accused escaped from the place of occurrence, PW 1 Masayappa Gounder got out of the car, went near the dead body of the deceased Khaja Moideen and immediately left for Pollachi where he lodged the first information report Ex P-1 at the Pollachi Bazar Police Station at 12.30 p.m. naming the accused to be the assailants.

7. The prosecution case further is that after the accused had committed the murder of the deceased Katturaja, they were chased by some of the villagers who had assembled hearing the alarms raised by the deceased and they entered the sugar-cane field of Arumugha Gounder. The sugar-cane field was surrounded by about 300 persons from the two villages Kunjipalayan and Karuppampalayam. At about 2 p.m., PW 21 Vadivelu, Station Officer, Pollachi with a posse of constables reached the place of occurrence. On being informed that the accused were hiding inside the sugar-cane field of Arumugha Gounder, he with the police party proceeded to the spot and asked the accused to surrender. When they did not come out, PW 21 together with the constables entered the sugar-cane field and brought out accused 1 and 2, Muthuswamy and Palaniappan alias Palaniswamy, with their blood-stained clothes. Accused 1 Muthuswamy made a statement leading to the discovery of his blood-stained aruval from the sugar-cane field. PW 21 was also able to recover the other blood-stained bichuvas and knife from the different parts of the sugar-cane field. It seems that the remaining accused had made good their escape before the arrival of police and they were apprehended afterwards. The chemical examiner's report Ex. P-22 shows that the incriminating articles were stained with blood. The serologist has found in his report Ex. P-23 that most of them were stained with human blood.

8. The prosecution rests its case against the accused on both direct as well as circumstantial evidence. The direct evidence consists of the testimony of the four eye-witnesses, PW 1 Masayappa Gounder, PW 2 Kuppuswamy, PW 3 Durai and PW 4 Arumughar, who speak about both parts of the incident i.e. assault on the deceased Khaja Moideen and the chasing of the deceased Katturaja by the accused with their blood-stained weapons, and the second as to the actual assault on the deceased Katturaja. The circumstances brought out are : (1) The pursuit of the deceased Katturaja by the accused armed with their blood-stained aruval, bichuvas and knife; (2) Soon thereafter, there was discovery by the villagers of the dead body of the deceased Katturaja lying in a pool of blood in the sugar-cane field of Masayappa Gounder; (3) The chasing of the accused with their blood-stained clothes and weapons by the villagers and their taking shelter in the sugar-cane field of Arumugha Gounder; (4) The surrounding of the sugar-cane field by the inhabitants of the two villages till the arrival of PW 21 Vadivelu; (5) The fact that accused 1 and 2 were brought out by PW 21 from the sugar-cane field and the recovery of the blood-stained aruval at the instance of the accused

Muthuswamy and the blood-stained bichuvas and knife from other parts of the field; and (6) The incriminating articles recovered from the accused were found to be stained with human blood. The High Court has accepted the evidence led by the prosecution and convicted the accused as stated above.

9. There can be no doubt on the findings reached that the accused were members of an unlawful assembly and they acted in furtherance of their common object to commit the murder of the deceased Katturaja and therefore the High Court should have convicted them on both the counts for having committed an offence punishable under Section 302 read with Section 149 of the Indian Penal Code instead of convicting them under Section 302 read with Section 34 as stated hereinbefore.

10. Learned counsel appearing for the appellants places great emphasis on the fact that one of these appeals being an appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, he is entitled to persuade the court upon a reappraisal of the evidence, to come to a different conclusion. We have been taken through the evidence particularly the testimony of PW 1 Masayappa Gounder, PW 3 Durai, PW 15 Dr. Giriappa who performed an autopsy on the dead bodies of the deceased Khaja Moideen and Katturaja.

11. We have overwhelming evidence on record showing that the accused were guilty of preplanned and cold-blooded murders. PW 1 Masayappa Gounder gives a vivid description of the first part of the incident resulting in the death of the deceased Khaja Moideen and the chasing of the deceased Katturaja at the exhortation of accused 1 Muthuswamy by two of his companions. There is a ring of truth in his testimony and there is no reason for us to disbelieve him. The High Court has relied upon the testimony of this witness and convicted the accused. The testimony of this witness is corroborated in material particulars by the first information report Ex. P-1 lodged by him at the Pollachi Bazar Police Station at 12.30 p.m. i.e. just about an hour of the incident, naming the appellants to be the assailants. The report gives a graphic picture with clear and sufficient details and there can be no doubt that the appellants alone and no one else committed these murders. There is no reason to suspect the veracity of his witness. He was subjected to a searching cross examination and nothing has been elicited to impeach his credibility as a truthful witness.

12. If the testimony of PW 1 Masayappa Gounder is accepted then that, by itself, is sufficient to sustain the conviction of the accused. There are however overwhelming circumstances which lend assurance to his version of the first part of the incident. The two parts of the incident are really one integrated transaction, consisting of the murder of the deceased Khaja Moideen followed by the chasing of the deceased Katturaja and the assault on him. PW 2 Kuppuswamy was on his way to Pollachi when he saw the deceased Katturaja being chased by accused 4 and 5 Masayan and Gopal armed with bichuvas. He states that accused 1 Muthuswamy shouted that they should not leave him. He also states that he saw the accused striking the deceased Katturaja with their respective weapons and the accused Muthuswamy assaulting him with his aruval. He is frank enough to say that he got frightened and rushed to his house and did not stir out till he heard of the death of the deceased Katturaja. PW 3 Durai, brother-in-law of the deceased Katturaja claims to have seen the second part of the incident leading to the assault on the deceased Katturaja. Even if we leave aside the testimony of this witness, there is the evidence of PW 4 Arumugham who saw the deceased Katturaja being chased by accused 4 and 5 Masayan and Gopal. He states that they caught hold of the deceased Katturaja and started assaulting him with their bichuvas. The accused Muthuswamy armed with the aruval and the others armed with bichuvas and knife joined in the assault and thereafter Muthuswamy struck the deceased on his neck with his aruval. PW 5 Palaniappan also speaks of the

chase of the deceased Katturaja. There was some criticism that these witnesses are not reliable but we are not shown any reason whatever not to act upon the testimony of PW 7 Kandaswamy who is a college student and in independent witness. He was proceeding to Pollachi from village Karuppanpalayam. At the crossing near village Kalipalayam from where the road leads to Pollachi, he saw the accused escaping from the place of occurrence armed with their blood-stained weapons. Some time after he saw 10-12 persons from village Karuppanpalayam chasing the accused. The accused escaped the wrath of the villagers by taking refuge in the sugar-cane field of Arumugha Gounder. This witness apparently stayed on till PW 21, Station Officer, arrived on the scene. He describes the manner in which the Station Officer with the constables went into the sugar-cane field and brought out accused 1 and 2. Thereafter, he went inside the sugar-cane field and brought out the aruval, five bichuvas and a knife. We have already stated that some of these weapons were found to be stained with human blood. The testimony of PW 1 Masayappa Gounder taken in conjunction with the other circumstances appearing leave no manner of doubt that the accused were rightly held guilty on both counts under Section 302 read with Section 34 of the Indian Penal Code as also under Section 148.

13. We are not impressed with the submission that PW 1 should be disbelieved because he is a highly interested witness or that PW 21 finding him to be a convenient witness 'planted' him in the rear seat of the Standard Herald car to lay a foundation to the prosecution evidence. From the manner in which PW 1 has deposed in court, it does not appear that he is in any way interested in the prosecution. On the contrary, he is also related to accused 1 Muthuswamy. The theory that PW 21 has set up this witness to bring home the charge against the accused is not worthy of acceptance. Learned counsel for the appellants however contends that it was highly improbable that PW 1 should have been present earlier in the morning in the garden of the deceased Katturaja at village Naickenpalayam as he on his own showing had left his house at village Kettimallapudur for Pollachi to buy insecticides for his garden. We are not impressed with this submission. It is but common knowledge that when a person leaves a village for the town, it is not unusual for him to visit other relations. The mother of the deceased Katturaja PW 6 Smt. Velliammal and his brother-in-law PW 3 Durai used to live in the garden at village Naickenpalayam and there was nothing improbable if the witness on his way to Pollachi visited the garden to enquire about their welfare. It was but natural for this witness to be present in the garden of the accused and to have asked for a lift in the car to Pollachi.

14. Learned counsel for the appellants strenuously contends that the meticulous details given by PW 1 in the first information report Ex. P-1 as to the first part of the incident i.e. assault on the deceased Khaja Moideen and the chasing of the deceased Katturaja with full particulars of the accused, weapons they held and the part they played in the assault. Taken together with his faltering memory brought out in his cross-examination show that the first information report was not lodged by him at 12.30 p.m. as alleged but had in fact been made some time after PW 21 returned to the Pollachi Bazar Police Station. He contends that there was inordinate delay in the despatch of the first information report to the Magistrate as required under Section 157 (3) of the Code till 5.30 p.m. which creates considerable doubt about its authenticity. There is no substance in this contention at all. It appears from the testimony of PW 21 that he remained in the village from 2 p.m. till late into the night carrying on investigation. He must have returned to the police station some time after 8 p.m. There is material on record to show that the statements in the police case diary were recorded till late in the night. It cannot therefore be suggested that the despatch of the first information report was withheld till 5.30 p.m. with any ulterior motive. Nor is there anything to bear out the assertion that it had been prepared after PW 21 had returned to the police station. The High Court is right in observing that if the prosecution was bent upon fabricating evidence but there

was nothing to prevent PW 1 from claiming to have witnessed both parts of the incident and to have prepared a first information report containing details of both the parts of the incident resulting in the deaths of the deceased Katturaja and Khaja Moideen. The first information report Ex. P-1 only contains a narration of the first part of the incident in relation to the murder of the deceased Khaja Moideen and the chasing of the deceased Katturaja by two of the accused.

15. We are also not impressed with the submission made by learned counsel for the appellants that PW 1 Masayappa Gounder was not visiting terms with the deceased Katturaja. Our attention was drawn to a statement made in the cross-examination where the witness says that neither prior nor subsequent to the incident had he visited the residence of the deceased Katturaja or his garden. From this the learned counsel tries to spell out an argument that the witness was not on visiting terms and therefore he is a got-up witness. The witness has nowhere stated that he was not on visiting terms. The answer that he gave in the cross-examination obviously referred to the fateful day. On that day, he could not have visited the deceased Katturaja at his house at Pollachi earlier to the incident. There was also no question of his visiting the garden at village Naickenpalayam after the brutal murder of his nephew.

16. We must mention in the last that learned counsel for the appellants read out a statements of PW 1 to show that his description of the manner in which the accused were wielding their weapons was highly improbable. The learned counsel tried to show how a bichuva is normally wielded. There is no material on record to bear out his assertion nor can we indulge in speculation or mere conjectures at his behest. It must be remembered that PW 1 Masayappa Gounder was in the rear seat of the car about 125 feet away from the spot where the deceased Khaja Moideen was assaulted with bichuvas and knife. It was but natural that he could not have noticed the manner in which they were used. Nor is there any basis for the suggestion of the learned counsel that punctured wounds would have been caused and not the incised wounds. PW 15 Dr. Giriappa has clearly stated that the injuries were caused by the seized weapons. It is not necessary when a bichuva is used on a fleshly part of the body that there would be a punctured wound. A bichuva has sharp edges on both sides and when it is drawn out, the outer appearance it leaves is of an incised wound. The doctor has stated that many internal organs were cut which shows that the weapons in questions were used in the assault. Further, all the wounds are not incised wounds and there are some punctured wounds as well.

17. For these reasons, the appeals must fail and are dismissed. The bail bonds of the appellants are cancelled and they shall surrender to serve out the sentence.

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