

Kannan and Others

Vs

State of Tamil Nadu

Criminal Appeal No. 187 of 1987

(M. P. Thakkar, B. C. Ray JJ)

31.10.1988

JUDGMENT

THAKKAR, J. –

1. Villupuram in Tamil Nadu was the scene of an occurrence which culminated in the killing of 9 Harijans and shocked the conscience of the country. In connection with this occurrence which took place ten years back on July 25, 1978, 36 non-Harijans were prosecuted. Five of them namely A-6, A-8, A-16, A-31 and A-35 were acquitted by the learned Sessions Judge. The remaining 31 were convicted for various offences under Section 302 read with Section 34, and/or Section 302 read with Section 149, Section 302 simpliciter and other sections of Indian Penal Code. Accused 1, accused 11 and accused 19 were sentenced to death by the learned Sessions Judge. The remaining accused were sentenced to undergo imprisonment for life. The convicts appealed to the High Court. There was also a reference for the confirmation of the death sentence in regard to A-1, A-11 and A-19. The High Court disposed of both these matters by an exhaustive and well-considered judgment giving rise to the present appeal.

2. The High Court confirmed the death sentence imposed on A-1, A-11, and A-19. The High Court confirmed the sentence of imprisonment for life imposed on 16 of the convicts. The High Court acquitted 13 of the convicts who had been convicted by the trial court. In this appeal we are mainly concerned with the death sentence imposed on A-1, A-11, and A-19 and the sentence of imprisonment for life imposed on the other accused who have appealed.

3. It appears that in the first week of July a Harijan woman of Peria colony was molested while returning from a cinema show. Incited by this incident, PW 69 along with his companion is alleged to have assaulted PW 79, a member of the Association of Vegetable Vendors on July 23, 1978. PW 79 in his turn reported the matter to the Association and also lodged a complaint with the police which is Ex. P-70. On the next day i. e. on July 24, 1978, the Association of the Vegetable Vendors observed a hartal at Villupuram. A great deal of tension prevailed in Villupuram. There were sporadic incidents of violence. It is alleged that Harijans set fire to the houses of non-Harijans. The non-Harijans in retaliation set fire to the houses of the Harijans of Peria Colony. This rioting continued on July 24 and 25, 1978.

4. The version of the prosecution is that on the morning of July 25, 1978 rumours spread that the Harijans of Peria Colony set fire to the houses of non-Harijans. Incited by such rumours, PW 1 and some others assembled and resolved to catch hold of Harijans of Peria Colony and teach them a lesson. In the wake of this development a number of incidents occurred between 9.30 a. m. and sunset. It is alleged that the victims were brought to Bharathiyar and Dharmaraja streets. They were

tied to poles and were assaulted. In the result 9 of the Harijans from Peria Colony succumbed to the injuries inflicted on them.

5. The version of the defence is that the accused have been falsely implicated, since all of them were residents of Maruthur village within the Municipal limits of Villupuram and as the dead bodies were found at Maruthur village and near about the said locality. According to them as the dead bodies of the 9 victims who had been done to death, were known by some unknown assailants who had killed them near the lane the police had implicated them on account of suspicion by reason of the fact that the dead bodies were found near Maruthur village. The trial court has accepted the evidence of 3 injured witnesses namely PW 3, PW 31 and PW 32 and several other witnesses including the evidence of PW 1, PW 2, PW 3 and PW 4 who have turned approvers. They were arrested on November 13, 1978 and made confessional statements on November 24, 1978. They have been granted pardon by the trial court. Relying on the testimony of the approvers, three injured eye-witnesses, and other witnesses who have supported the prosecution version the trial court has convicted the appellants and sentenced them in the manner indicated earlier. The High Court on a close and careful imposed on A-1, A-11 and A-19. The High Court has also confirmed the sentence of imprisonment for life imposed on A-2, A-5, A-7, A-9, A-10, A-13, A-14, A-15, A-20, A-21, A-22, A-23, A-24, A-28, A-29 and A-30. We are now concerned with the conviction of the aforesaid accused and the question as regards the propriety of the death sentence imposed on A-1, A-11 and A-19. We have been taken through the relevant part of the judgment of the trail court and the High Court. We have also been taken through the evidence of the concerned witnesses. On an analysis of the evidence we consider it appropriate to set out in a tabular form the evidence which connects each of the accused persons and the evidence of the witnesses which connects the particular accused in the context of the injuries inflicted on the victims and the connected weapons used in the assault.

6. Insofar as the three accused i. e. A-1, A-11 and A-19, who have been sentenced to death are concerned the aforesaid particulars may be gleaned from the following statement :

#-----Accused Deceased Over act
as per witnesses Weapons

used----- 1 D 1 PW 1 speaks of
presence only Casuarina stick PW 32 says that A-1 beat D-1 with casuarina stick on
the right side of the head near the bridge and tied D-1. D 7 PW 3 says that A-1
waylaid D-7 Casuarina and beat him on the head. stick PW 4, PW 44, PW 45, PW 46
& PW 50 also speak the same 11 D 6 PW 4 states that A-11 beat on his head twice.
PWs 30, 31 & 32 also speak Casuarina the same stick D 8 PW 4 says that A-11 beat
him on Casuarina the right side chest. PWs 30, stick 31 & 32 also speak the same. 19
D 5 PW 1 states that A-19 beat D-5 on Aruval the back side of his head near the lake
D 7 PW 3 says that A-19 bead D-7 on Iron rod the back side of the head with an iron
rod (MOID) PWs 4, 44, & 50 also speak-----
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7. With regard to the evidence connecting rest of the accused, who have been sentenced to imprisonment for life, the relevant material may be gathered from the following tabular statement :

#-----Accused Deceased Over act
as per witnesses Weapons used-----
(1) (2) (3) (4)----- A-2 D-8 PW 3

Cut D-8 on the back of his Koduval head with koduval PW 4 also supports A-5 D-8 PW 3 Cut D-8 on his side Aruval forehead PW 4 also supports A-7 D-2 PW 47 Beat on right side of the Casuarina neck of D-2 stick A-9 PW 47 Heading one of D-2 to D-4 Koduval on the lower jaw with the (according bent portion of koduval to charge sheet casuarina stick) A-10 D-4 PW 1 Beat D-4 on his left side Iron pipe chest near the lake A-13 D-3 PW 1 Beat D-3 on backside of the Casuarina head near lake stick A-14 PW 1, He was in the group taking PW 2 D-5 PW 44, He was one of the persons Casuarina PW 45 dragged D-2, D-3, D-4 at stick PW 46 10.15 a.m. (according to charge) A-15 D-3 PW 45 Beat D-3 on the right side Casuarina of frontal region (forehead) stick PW 47 also speaks A-20 PW 1 speaks of his presence PW 47 attacked one of D-2 to D-4 Casuarina with a casuarina stick on stick his right hand A-21 D-2 PW 47 Beat on right side neck Casuarina

stick A-22 D-2 PW 47 Beat D-2 with casuarina Casuarina stick stick A-23 D-2 PW 1 Beat D-2 on the head Casuarina

stick A-24 PW 1 Beat D-5 on the back PWs 43 Beat D-2 on the side of the Casuarina 44 & neck stick 47 A-28 PW 3, 4 Beat D-7 on the back of the Casuarina 46 & 50 head stick A-29 D-8 PWs 3 Beat on the left forehead Casuarina and 4 stick A-30 PW 3 Cut both the legs of D-7 PWs 4 also spread Aruval 44, 46 and 50-----
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8. Having perused the evidence of the witnesses and having accorded our anxious consideration to the submissions made by the learned counsel for the appellants, we are satisfied that the trial court and the High Court were perfectly justified in accepting the evidence of the three injured witnesses PW 30, PW 31 and PW 32. The medical evidence pertaining to the injuries sustained by them fully corroborates their version as regards their presence at the scene of the occurrence. The trial court and the High Court have recorded concurrent findings accepting the incriminating evidence insofar as the appellants are concerned. Counsel for the appellants has not been able to satisfy us that there exists any infirmity in the appreciation of evidence, or assessment of evidence, or in the approach of the courts below to the relevant evidence. There is thus no reason to upturn the concurrent finding of the said courts in this respect.

9. We have also carefully considered the evidence of each of the 4 approvers namely, PW 1, PW 2, PW 3 and PW 4. By and large their evidence has been accepted by the trial court and the High Court and we see no reason to disturb the concurrent findings of facts recorded by the aforesaid courts insofar as their presence at the scene of occurrence and their participation in the offence is concerned. It is now shown that any of them had any personal animus, motive, or design to falsely implicate the appellants. Even so in regard to their evidence we have made an approach informed with caution with a view to seek independent corroboration. Both the trial court and High Court have taken into account the other evidence which corroborates their testimony. And on appreciation of their evidence, and the evidence of witnesses who have corroborated their testimony, recorded a finding of guilt against all of them. We are not shown any good reason, and we see no good reason, to differ from the assessment made by the trial court and the High Court in regard to the credibility of their testimony and with regard to the quantity, and quality of the evidence connecting the appellants to the crime. We therefore confirm the order of conviction as against each and all of the appellants.

10. Insofar as the appellants excepting original accused 1, 11 and 19 are concerned the sentence of

imprisonment for life and the other sentence on the other counts must be confirmed. Insofar as the three appellants on whom death sentence has been imposed are concerned namely accused 1 (Kannan), accused 11 (Pachiappan) and accused 19 (Amavasai alias Ramalingam), we have carefully considered the facts and circumstances of the case and have reached the conclusion that the ends of justice will be met if the sentence of death imposed on them is converted into the sentence of imprisonment of life. We have formed this opinion inter alia on the ground that if the case of the rest of the appellants is not considered as "rarest of the rare" case within the parameters of the decision of this Court in Bachan Singh v. State of Punjab, the case of accused 1, 11 and 19 cannot be brought under the category of 'rarest of rare' case particularly having regard to the facts of the case. A charge of conspiracy was framed against all the appellants, but all the appellants have been exonerated of the charge of conspiracy. One of the reasons which has weighed with the High Court in confirming the death sentence on accused 1, 11 and 19 is that each of them was responsible for causing death of two victims by assaulting them. On an examination of the evidence on record and the judgment under appeal, we find that accused 1 has been found guilty of causing death of two victims namely D-1 (Sellamuthu) and D-7 (Manikundu). Now so far as the evidence connecting accused 1 with the death of deceased 1 is concerned, the evidence of PW 32 (one of the injured witnesses) corroborates the evidence of the approver who has implicated the said accused with the death of the D-7 is concerned the conviction is essentially structured on the evidence of PW 3 (an approver) and other witnesses who are not injured witnesses. None of the three injured witnesses namely PWs 30, 31 and 32 implicates him. Under the circumstances we consider it appropriate to impose a sentence of imprisonment for life instead of death sentence.

11. Turning now to the case of accused 11, he has been implicated in connection with the death of two victims namely D-6 (Rangaswamy) and D-9 (an unidentified person). But so far as the evidence of D-6 is concerned the medical evidence shows that his death was caused by strangulation whereas the evidence of the witnesses including the three injured eye-witnesses (PW 30, 31 and 32) is to the effect that he was assaulted by casuarina stick. We consider it a circumstances which can reasonably be taken to account for converting the death sentence into one of imprisonment for life. Accused 19 has been implicated for the assault on D-5 (Arumugham) and D-7 (Manikundu) resulting in the death of the aforesaid two victims. In regard to evidence implicating accused 19 with the death of D-5 is concerned, there is the evidence of PW 1 (one of the approvers) and other witnesses. But the evidence of the approver is not corroborated by the evidence of any one of the three injured eye-witnesses namely PW 30, 31 and 32. Under the circumstances in his case also, in our opinion, the appropriate sentence to impose would be the sentence of imprisonment for life. We accordingly convert the sentence of death into a sentence of life imprisonment.

12. In the result the convicting of all the appellants is confirmed. Insofar as the sentence of death imposed on three of the original accused i. e. accused 1 (Kannan), accused 11 (Pachiappan) and accused 19 (Amavasai alias Ramalingam) is concerned the sentence of death is converted into a sentence of imprisonment for life. All the appellants will, therefore, suffer imprisonment for life. The sentence imposed on all the appellants on the other counts stands confirmed. The appeal of original accused 1, 11 and 19 namely Kannan, Pachiappan and Amavasai alias Ramalingam partly succeeds on the question of sentence to the limited extent that the sentence of death imposed on them is converted into sentence of imprisonment for life. So far as the other appellants are concerned, the appeal fails and is dismissed.

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