

Pandian @ Veerapandian

Vs

State of Tamil Nadu

(M. M. Punchhi, Sujata V. Manohar JJ)

24.10.1997

JUDGMENT

MRS.SUJATA V.MANOHAR, J.

1.This is an appeal by the original accused No.1 Pandian @ Veerapandian from a judgment of the Division Bench of the High Court of Madras convicting him under Section 120B read with Section 304 Part I of the Indian Penal Code.He has been sentenced to seven years' rigorous imprisonment.The prosecution case briefly is as follows:

2.One Kunju & Govindraj who was the paternal uncle of P.W.1 Raja and was related to accused Nos.1 and 2 had contested the Presidentship of the village Panchayat in 1986.His opponent was PW.4 Dhanamani.PW.4 won the election.Deceased No.1 had supported PW.4 offering him financial aid and support while accused No.1 the present appellant, was a strong supporter of Kunju @ Govindraj.There was, therefore, enmity between accused No.1 and PW.1 on the one side and deceased N.1 and the others on the other side.Accused No.1 was a Panchayat Union Contractor. The bills which were due to him were not assed for payment and he presumed that this was done at the instance of PW.4 and his men.The stopping of payment led to a quarrel between accused No.1 and PW.4 on 23.4.1986.In respect of this incident PW.4 had preferred a complaint at the police station.3.On 25.4.1986 there was yet another clash at 8.30 p.m.between the group supporting PW.4 and the group owing allegiance to accused No.1.In this occurrence accused No.1, his father and his younger brother sustained injuries and were admitted to Government Hospital, Chidambaram.A criminal complaint has also been lodged in this connection.Two days thereafter on 27.4.1986 there was another incident when PW.1 and others proceeded to the house to Rajalaxmi the wife of deceased No.1 and abused her in vulgar language in respect of which also a criminal complaint has been lodged.

4.It is the prosecution case that some time thereafter the accused No.1 told PW.1 that deceases No.1 Kodandaswami was behind the attack on him, his father and his younger brother and therefore, deceased No.1 should not be allowed to live any more.Two or three days prior to the incident accused No.1 escorted PW.1 to the tea shop of PW 13 situated in Melamoongiladi.Accused No.1 asked PW.1 to fetch accused No.2 from Chavadikuppam.Accused No.2 is also related to accused No.1 and PW.1.Accordingly PW.1 fetched accused No.2 by a bus from his village which is about 40 kilometres away.At about 5.30 p.m.in the evening the two accused and PW.1 came to the tea shop of PW.13.Accused No.1told accused No.2 that deceased No.1 was responsible for attacking him, his father and his brother and hence he should be killed.Accused No.1 also told accused No.2 that every night deceased No.1 returns to his native village from Bhawanagiri and accused No.2 could hit deceased No.1 by driving his car over him so that it would appear as if deceased No.1 had lost his life in a motor accident.Accused No.2 said that he did not know deceased No.1 and would not be able to identify him whereupon PW.1 said that he would accompany accused No.2 in the car and

would identify, deceased No.1.

5. On 22.5.1985 accordingly in the evening at about 7.00/7.30 p.m. PW.1 went to the workshop of accused No.2. Thereafter both of them took Car No. TNJ69, filled it with petrol and reached Bhavanagiri. The car was halted near Chamundeeswari Temple. PW.1 left the car to ascertain whether deceased No.1 was still available in the market place or had left for his village. He ascertained that the deceased was in the vicinity and he had started his journey towards his village. Deceased No.1 was accompanied by deceased nos.2 and 3 and PW.3 when the car came upon these persons. There were, thus, four persons walking along the road. Accused No.2 told PW.1 that he will not be able to hit deceased No.1 alone. He will have to hit all the persons. PW.1, however, directed him to do so. Accordingly the accused No.2 drove his car and hit deceased nos.1, 2 and 3 as well as PW.3. The car drove away thereafter. The car had suffered some damage for which it had to be repaired. In the meantime several persons had gathered at the spot of the accident. As a result of the accident deceased nos. 1, 2 and 3 died while PW.3 sustained injuries for which he had to be hospitalised. A criminal complaint was lodged. We need not examine at any length the progress of the case. Accused No.2 surrendered on 11.6.1986. PW.1 was arrested on 27.5.1987. He made a confession on 1.6.1987. Ultimately he was turned Approver and was pardoned on 14.7.1987. The judicial confession of accused No.2 was recorded on 6.6.1987 which he has later on retracted. Five charges were framed against the accused. The first charge indicted both the accused for having conspired in the company of PW.1 to commit the murder of Kodandapani deceased No.1 in pursuance of which conspiracy accused No.2 did commit his murder by driving the car bearing registration No. TNJ 69 and hitting the car against him at about 11.30 p.m. on 22.5.1986 on Bhavanagiri Kodalore main road. Conspiracy was allegedly hatched between 25.05.1986 and 22.5.1986. The first charge also states that in the process of dashing against deceased No.1, A2 dashed the car against Sundaram deceased No.2, Vellaian @ Arumukum deceased and Harikrishnan PW.3 resulting in the death of D2 and D3 and causing grievous injuries to PW.3. The second charge was framed against A2 alone under Section 302 Indian Penal Code for having caused the death of D1 by dashing the car bearing No. TNJ 69 against him resulting in his death. The third and fourth charges indicted A2 similarly for having caused the death of D2 and D3 and the fifth charge was also framed against A2 under Section 307 Part II Indian Penal Code for having attempted to murder PW.3 in the course of the same transaction by dashing the car against him. On conclusion of the trial the Learned Sessions Judge acquitted both the accused of the first charge framed under Section 120B I.P.C. A2, however, was found guilty of charges 2, 3 and 4 and was sentenced to undergo imprisonment for life on each count. He was also found guilty under the fifth charge and was sentenced to undergo rigorous imprisonment for five years; sentences to run concurrently. The State appealed before the High Court.

6. The High Court, in a detailed judgment, has re-examined the entire evidence which was led before the Sessions Court. The two important pieces of evidence before the High Court, namely, the evidence of PW.1 who has turned Approver and the judicial confession of A2 which was later retracted by him, have been considered by the High Court in the light of other evidence which materially corroborates these two pieces of evidence. The High Court has held the evidence of PW.1 as reliable. It has also relied upon the evidence of PW.13, the owner of the tea shop who has deposed to the presence of both the accused and PW.1 in his tea shop at about 6.30 p.m. two or three days prior to the incident. The High Court has held this meeting to be significant since accused No.2 was a resident of a village 40 kilometres away and the unusual! visit of the accused No.2 in the company of accused No.1 and PW.1 in the tea shop of PW.13, has been taken note of as corroborative material. The High Court has also relied upon the evidence of PW.3 who has spoken about the presence of PW.1 at the shop of PW.24 at about 10.30 p.m. on the night of the incident. This witness

has also spoken about his leaving in the company of deceased No.1 and others for his village since it was nearing 1 p.m. The High Court has also noted the evidence to PW.2 who was present at the workshop of accused No.2 on that particular evening. He has deposed that PW.1 came to the workshop and stated that accused No.1 had asked for the car after which accused No.2 and PW.1 left with the car. PW.5 who is an Attendant at the petrol pump where PW.1 and A2 stopped the car to fill it up with petrol has also deposed to their presence at the petrol pump. The High Court has also referred to the testimony of PW.17 relating to the damage to the car which was involved in the incident, which fits in with the nature of the damage spoken of by PW.1.7. The High Court has also dealt at length on the motive for the commission of the crime and has come to the conclusion that the strongest motive was that of accused No.1. The High Court has come to the conclusion that it is the machinations of accused No.1 which led to the commission of the offences alleged. The High Court has gone into the question of delay at length regarding the initial report which indicated accidental death and the subsequent developments which ultimately led to the framing of the present charges. After a detailed reasoning the High Court has come to the conclusion that the view taken by the Sessions Judge is not a plausible view at all and consequently there has been miscarriage of justice. The High Court has reversed the order of acquittal of accused No.1 passed by the Sessions Judge. On the nature of the offence, the High Court has looked to the nature of the evidence and convicted accused No.1 for conspiracy. It has, however, held that though the evidence of the Approver is that the conspiracy was for commission of murder of deceased No.1, the court could not close its eyes to the judicial confession of accused No.2 which indicated that the offence expected to be committed was limited to breakage of hands and legs of deceased No.1. The High Court said that the benefit that arises out of the confession of accused No.2 cannot be denied to accused No.1. Hence the High Court has convicted accused No.1 under Section 120B read with Section 304 Part I of the I.P.C. Similarly accused No.2 has also been convicted by the High Court under Section 120B read with Section 304 Part I of the I.P.C. The detailed reasoning given by the High Court in its judgment is exhaustive and convincing. There is no reason to take a view different from the view taken by the High Court. Hence the present appeal is dismissed.