

**Chinnasamy Vs. State**

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**Court :** Chennai

**Decided On :** Jan-08-1993

**Reported in :** 1994CriLJ882

**Judge :** Janarthanam and;Thangamani, JJ.

**Appeal No. :** C.A. No. 698 of 1986

**Appellant :** Chinnasamy

**Respondent :** State

**Advocate for Def. :** Mr. S. Shanmughavelayutham, Addl. Public Prosecutor

**Advocate for Pet/Ap. :** Mr. K.V. Sridharan, Adv.

**Judgement :**

1. Appellant Chinnasamy was the first accused in S.C. No. 103 of 1985 on the file of learned Sessions Judge, Tiruchirapalli. He along with five others stood charged before the trial Court as under on the allegation that at about 7.00 p.m. on 21-1-1985 in front of the house of deceased Kauthan Muthuraja at Ettarai village all of them formed themselves into an unlawful assembly and committed rioting, that during the course of the said rioting and in prosecution of the common object of such assembly, A1 committed the murder of the said Kantham Muthuraja by cutting him with an aruval on his head and other parts of the body and that all of them trespassed into the house of the said Kantham Muthuraja and that they committed

mischief by destroying the articles in the said house.

Charge No. Section Accused1 147 IPC A2 to A62 148 IPC A13 302 IPC A14 302  
read with A2 to A6 Section 1495 448 IPC A1 to A66 436 IPC A1 to A6

After trial learned Sessions Judge found the first accused alone guilty under section 302, I.P.C. convicted and sentenced him to imprisonment for life. He acquitted first accused of charge Nos. 2, 5 and 6 and accused 2 to 6 of all the charges.

2. The prosecution examined 13 witnesses, filed 20 Exhibits and marked 20 M.Os. of the witnesses examined P.W. 6 Periasamy turned hostile. These facts emerge from the evidence adduced. P.W. 1 Shanmugam and P.W. 2 Dhanapalan are the sons of deceased Kanthan Muthuraja. P.W. 3 Sembayee is the wife of the deceased. The daughter of first accused Chinnasamy is married to one Subramanian, another son of deceased and P.W. 3 accused No. 2 Thulasiammal is the mother of first accused Chinnasamy. Third accused Sundarrajan is the brother-in-law of first accused Chinnasamy. Accused 4 to 6 are the relatives of first accused.

3. Five months prior to the occurrence Subramanian got separated from the family of his deceased father. Kanthan Muthuraja obtained a release deed from Subramanian for this purpose. Four days prior to the occurrence Kanthan Muthuraja sold a pumpset to P.W. 5 Subramanian. On 21-1-1985, Monday at about 4.00 p.m. Subramanian met his father who was standing on the road south of his house and asked him to give his share in the sale proceeds of the pumpset. Kanthan Muthuraja replied that since he had already become divided he was not entitled to a share in the pumpset. There was wordy altercation between the two. Since P.W. 1 sensed that it might lead to exchange of blows between father and son, he immediately brought Kanthan Muthuraja to the house. Some time later Kanthan Muthuraja left for the garden. On return he told P.W. 1 Shanmugam that second accused Thulasiammal beat him with broom stick and so he retaliated by beating her with bamboo stick.

4. On the same day at about 7.00 p.m. accused 1 to 6 came to the house of Kanthan Muthuraja. P.W. 1 Shanmugam, his brother P.W. 2 Dhanapalan, their mother P.W. 3 Sembayee were there. P.W. 4 Chinnathambi also happened to be there on his way to the house of one Mookan. First accused called Kanthan Muthuraja to come out of the house. As soon as he came out, he asked him how he could beat his mother and saying cut on the head of Kanthan Muthuraja with an aruval. While second accused pelted stone on the face of the deceased, third accused beat him with M.O. 4 spade handle. Accused 4 to 6 beat the deceased with M.O. 1 to M.O. 3 sticks. Kanthan Muthuraja fell down. Thereafter first accused cut Kanthan Muthuraja three times. Accused 3 to 6 also repeated their assaults with sticks. P.Ws. 1 and 2 came out. P.W. 3 prevented them from going out stating that the accused would beat them also. Thereafter A1 and A3 to A6 trespassed into the house and damaged the photos, electric bulbs and ran away from that place. M.O. 5 is the broken bulb and M.O. 6 series are the broken glass pieces.

5. Then at about 9.30 P.W. 1 Shanmugam and P.W. 4 Chinnathambi took Kanthan Muthuraja in a taxi to Somarasampettai police station, which is 12 kms. away. There P.W. 1 gave Ex. P1 complaint against accused 1 to 6. P.W. 12 Sub-Inspector registered the same in his Station Crime No. 35 of 1984 under sections 147, 148, 323, 427 and 307, I.P.C. He prepared Ex. P12 printed FIR and despatched them to concerned authorities. He sent the injured to hospital with Ex. P11 medical memo.

6. In the meanwhile at 9.05 p.m. A2 Thulasiammal was produced before P.W. 9 Doctor in Government Hospital, Trichy with a police memo for report as to certain injuries said to have been caused at 7.00 p.m. on the same day by a known person on account of assault with knife at her residence. The Doctor found these injuries :

1. An incised wound 7 cm x 1 cm x skin depth over the left present.
2. An incised wound 4 x 1 cm skin deep distal to wound (1).
3. An incised wound 2 cm x 1/2 cm x skin deep over left ulnar eminence.

4. Abrasion 1/2 x 1/2 cm over left index finger.

Ex. P8 is the copy of the Accident Register. In the opinion of the Doctor the injuries could have been sustained at the time and in the manner alleged.

7. At 9.45 p.m. P.W. 9 Doctor examined Kanthan Muthuraja in the Government Hospital, Trichy. He found three incised wounds on the head and one lacerated wound over the upper lip of Kanthan Muthuraja. The Doctor was informed that at about 7.00 p.m. on that day he sustained the injuries on account of assault with stone and aruval by known persons. In the opinion of the Doctor the injuries could have been caused at the time and in the manner alleged.

8. On 22-1-1985 at 6.00 a.m. P.W. 12 Sub-Inspector received Ex. P.13 death intimation from hospital stating that Kanthan Muthuraja expired at 12.10 a.m. on that day. Thereupon, the Sub-Inspector altered the crime, to one under section 302, I.P.C. and sent Ex. P.14 express FIR to his authorities.

9. P.W. 13 Inspector took up investigation of the case and held inquest over the dead body from 8.00 a.m. to 10.00 a.m. He examined P.Ws. 1 and 2 at the time of inquest. Ex. P.15 is the inquest report. On the same day he could M.Os. 10 to 19 photographs to be taken by P.W. 8 Photographer.

10. At 11.15 a.m. P.W. 10 Doctor commenced autopsy over the dead body of Kanthan Muthuraja as per Ex. P9 requisition of the Inspector. He found these external injuries :

1) Sutured wound right temporal region - two black silk sutures 3 cm x 2 cm x 2 cm.

2) Sutured wound over occipital region - three black silk sutures 4 cm x 3 cm x 2 cm.

3) Sutured wound over vertex of scalp one - black silk suture 2 cm x 1 cm x 1 cm.

4) Lacerated wound left elbow 2 cm x 2 cm x 1 cm.

5) Abrasion left shoulder 2 cm x 2 cm.

6) Abrasion over upper lip 1 cm x 1 cm.

#### INTER EXAMINATION - HEAD AND NECK :

1) Fracture right temporal bone both tables 4 cm x 1 cm.

2) Fracture occipital bone 3 cm x 1 cm congested - Extravassation of blood in extract subdural spaces about 200 cc. Brain 1400 grams. right cerebral hemisphere lacerated and contused over the lateral surface 2 cm x 2 cm x 1 cm. cerebellar hemisphere - generalised contusion spinal cord - nil injury Hyoid bone intact.

In the opinion of the Doctor, the deceased would appear to have died of injury to vital organs 10 to 14 hours prior to autopsy. While the head injury could have been sustained by cutting with aruval, the injury on the lip could have been inflicted by pelting of stone. The other injuries could have been cause by beating with stick. The injury on the head is sufficient to cause death. Ex. P.10 is the post-mortem certificate.

11. At 4.00 p.m. P.W. 13 Inspector inspected the scene of crime and prepared Ex. P2 Observation Mahazar. At 4.30 p.m. he recovered M.O. 3 stick, M.O. 4 stick, M.O. 5 broken bulb, M.O. 6 broken glass pieces, M.O. 7 wooden frame, M.O. 8 blood-stained earth, M.O. 9 sample earth from there under Ex. P3 Mahazar. P.W. 6 Periasamy and P.W. 7 Gnanaraja attested the Mahazars.

12. On 28-1-1985 A1, A3, A4 and A5 surrendered in JSCM. Court, Perambalur. On the next day at 9.00 p.m. P.W. 13 Inspector arrested A2 and A6 near the bus stand, Manaparai. A6 gave a confession statement, the admissible portion of which is Ex. P.5. Pursuant to the same, he took the Inspector at 6.00 a.m. on 30-1-1985 to Ettaraipalayam and produced M.Os. 1 and 2 sticks from a bush. The Inspector seized the same under Ex. P6 Mahazar which was also attested by P.Ws. 6 and 7. On a receipt of Ex. P.12 Requisition blood-stained articles were sent for chemical examination from JSCM Court and under the original of Ex. P.18 covering letter. Ex. P.19 and Ex. P.20 are reports of Chemical Examiner and Serologist. On competition of investigation P.W. 13 laid charge-sheet on 12-6-85.

13. When examined under section 313, I.P.C. the accused denied the allegations against him. However, they conceded that A2 had sustained injuries. The said A2 Thulasiammal had also filed a statement under Section 233(2), Cr.P.C. stating that she is aged about 76 years. She is wearing aspects for the past ten years. Without the aid of walking stick she will not be able to walk. She did not beat the deceased on the day of occurrence with broom stick. The deceased did not beat her back. Neither this accused went to the house of the deceased at 7.00 p.m. on that day nor she beat him with stone. A1 and A3 to A6 were not present at the time of occurrence. The offence took place in front of the house of the accused at 7.00 p.m. Deceased Kanthan Muthuraja came to her house in a drunken mood and scolded his son Subramanian. Subramanian was present in his house at that time. This accused asked the deceased why he was abusing his son. Thereupon, the deceased stabbed this accused several times. So, Subramanian in order to save this accused assaulted the deceased. This accused later on went to the police station in town bus, obtained memo and appeared before the Doctor.

14. On an appraisal of the evidence the trial Court convicted A1 alone and absolved the other accused as indicated above and hence this appeal.

15. Learned counsel for the appellant first submitted that there is a grave doubt about the origin of Ex. P1 complaint since different versions were put forth by P.Ws. 1, 4 and 12 Sub-Inspector regarding the writing of the same and the time and manner in which it came into existence. As per P.W. 12 Sub-Inspector on 21-1-1985, P.W. 1 Shanmugam came to the station and gave Ex. P1 complaint which he registered in his Station Crime No. 35 of 1985. It is his version in cross-examination that as soon as P.W. 1 Shanmugam arrived in the police station with his father he narrated the incident to him. Then he asked P.W. 1 Shanmugam to give it in writing. Accordingly P.W. 1 gave Ex. P1 in writing by utilising the paper furnished by the Sub-Inspector. In the same breathe P.W. 12 Sub-Inspector states that P.W. 1 Shanmugam brought Ex. P1 written complaint even when he arrived at the police station. Whereas P.W. 1 Shanmugam states in the witness box that in the police station they took down the narration given by him of the incident and obtained his signature thereon. He was not able to remember whether it was P.W. 12 Sub-Inspector or the Head Constable who wrote the complaint. He again stated

that he gave Ex. P1 complaint in writing P.W. 4 Chinnathambi is stated to have accompanied P.W. 1 and the deceased to the police station when Ex. P1 complaint was given. His version is to the effect that P.W. 1 wrote Ex. P1 and handed it over in the police station. He admits in cross-examination that in the presence of the Inspector and the Sub-Inspector P.W. 1 wrote Ex. P1 complaint in the police station and gave it to him. His next statement is that P.W. 12 Sub-Inspector wrote what P.W. 1 stated in the police station and obtained his signature therein. These prevarications in evidence regarding the lodging of FIR make it to lose all its credibility, and create a doubt regarding the truth of the prosecution version.

16. Besides, P.W. 12 Sub-Inspector has endorsed in Ex. P1 complaint that the case was registered at 9.30 p.m. on 21-1-1985. As per the evidence of P.W. 1 Shanmugam occurrence had happened at 7.30 p.m. Then they left for the police station at 9.00 p.m. and reached there by 9.30 p.m. covering a distance of about 7 kms. This complaint lodged in Somarasampettai Police Station had reached JSCM Court, Trichy only at 11.30 p.m. on 22-1-1985. This delay also strengthens the claim of the appellant that there was grave doubt about the origin of F.I.R. ;

17. P.Ws. 1 to 4 are the eye-witnesses to the occurrence, on whose evidence learned Sessions Judge has convicted the appellant/first accused. While P.Ws. 1 and 2 are the sons of the deceased, P.W. 3 is his widow. It is true that simply because they are relatives of the deceased, we cannot discard their evidence. However, prudence requires that their verisions must be scrutinised with great care and caution. We have already seen that P.Ws. 1 to 4 prevaricated as regards the coming into existence of Ex. P1 complaint. As per the evidence of P.Ws. 1 to 4 the assault on the deceased had happened when he was in his house at about 7.00 p.m. on that day. However, we find that in Ex. P1 it is not expressly stated that the venue of occurrence is the house of the deceased. Instead, it reads that when Kanthan Muthuraja was on his way to the garden he was intercepted by A2 Thulasiammal. The deceased caught hold of Thulasiammal and beat her with a stick. A2 ran away and informed her son A1 Chinnasamy. Thereupon, A1, A3, A4, A5 and A6 came running and A1 cut on the head of the deceased. A3, A4, A5 and A6 damaged the photos and electric bulb in his house and beat his father with

stick and stone. This complaint does not say that A2 Thulasiammal accompanied the other accused when they came to assault the deceased. On the other hand, all the four eye-witnesses expressly state in the witness-box that all the six accused were present at the time of the occurrence. While Ex. P1 complaint baldly recites that A3 to A6 beat the deceased with stick and stone, in the witness-box the alleged eye-witnesses speak about the overt act committed by each of that accused. While as per Ex. P1, A3, A4, A5 and A6 are stated to have beat the deceased with sticks and stone, in their evidence P.Ws. 1 to 4 state that while A3 to A6 beat with stick, A2 beat with stone in her hand. Ex. P1 complaint nowhere stated that A2 was armed with stone. So, there is no consistency regarding the actual manner of occurrence in the evidence of P.Ws. 1 to 4.

18. P.W. 13 Inspector states that he held inquest over the dead body from 8.00 a.m. to 10.00 a.m. on 22-1-1985 in Government Head Quarters Hospital, Trichy. He examined P.Ws. 1 and 2 only during inquest, but Ex. P15 inquest report had reached the court only at 5.05 p.m. on 23-1-1985. This delay is significant and P.W. 13 Inspector has not chosen to give any explanation for it. Unexplained delay in the examination of principal witnesses by the investigating officer would certainly cause a reasonable doubt about their veracity and it would not be safe or reasonable and proper to accept the evidence of such witnesses.

19. As per the ocular version of the eye-witnesses A1 beat thrice on the head and once on the hand, A2 beat with stone once on the face. But we find from the evidence of P.W. 9 and P.W. 10 Doctors that there were three cut injuries on the head and one lacerated injury on the lips. The injury on the left shoulder is only a simple abrasion. There were one lacerated injury on the left elbow and one abrasion on the left shoulder. Had really A3 to A6 dealt the blows with stick as spoken to by them, the deceased would have received many more injuries. So, we cannot say that the medical evidence fully corroborates the evidence of the eye-witnesses. Besides in Ex. P15 inquest report there is no mention about the use of stone as a weapon of offence.

20. A2 Thulasiammal has filed a statement under section 233(2), Cr.P.C. mentioning that the other accused were not involved in the occurrence which took

place at 7.00 p.m. on that day. The deceased came in a drunken mood to her house at about 7.00 p.m. and abused his son Subramanian. When the accused asked the deceased why he was finding fault with Subramanian, the deceased stabbed her with knife several times. In order to protect her Subramanian attacked his father. And we find from Ex. P8 and the evidence of P.W. 9 Doctor that A2 Thulasiammal was examined by him at 9.05 p.m. on 21-1-1985 for report as to certain injuries stated to have been caused with knife by known persons at 7.00 p.m. on 21-1-1985 at her residence and she had sustained three incised wounds and one abrasion all of which are simple in nature. In Ex. P9, the requisition for post-mortem it is mentioned that at 7.00 p.m. on that day the deceased quarreled with A2 Thulasiammal with a stick and her son Chinnasamy's relatives came to his house and pulled him outside and Chinnasamy assaulted the deceased with aruval. P.W. 13 Inspector also admits in cross-examination about the writing in Ex. P9. There is also no dispute that the complaint given by A2 for the assault on her was registered in Crime No. 34 of 1985 under Sections 341 and 323, I.P.C. So, the possibility of the occurrence having taken place in front of the house of A2 Thulasiammal as claimed by her in her statement under section 233(2), Cr.P.C. cannot be ruled out.

21. So, we find that right from the beginning the prosecution was giving a distorted version of the incident. It is true that often times the court has to separate grain from the chaff, truth from the falsehood. Yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up, that in the process of separation the court would have to reconstruct and absolutely a new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply. Further on the facts of the present case having regard to the evidence of P.Ws. 1 to 4 it is not possible to reject their version with respect to A1 and accept it with respect to the other five accused who were acquitted by the Sessions Court. If all the witnesses could in one breath implicate the five accused who appear to be innocent, then one cannot vouchsafe for the fact that even the acts attributed to A1 may have been conveniently made to suit the needs of the prosecution case. In the background of the present case,

we do not think that it is possible that the case of the appellant can be distinguished from that of the other accused. If the case against A2 to A6 fails then the entire prosecution will have to be discarded and it will not be possible for the court to make out a new case to convict the appellant alone. We do not think it is proper to convict A1 alone while A2 to A6 had been acquitted on the same set of evidence. So, the conviction and sentence passed against the appellant herein are unsustainable.

22. In the result, the appeal is allowed and the conviction and sentence passed by the trial Court are set aside. The appellant-A1 is acquitted of the charge against him under section 302, I.P.C. His bail bond shall stand cancelled.

23. Appeal allowed.

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