

**Pitchaimani and Others Vs. the State**

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**Court :** Chennai

**Decided On :** Jan-27-1994

**Reported in :** 1995(1)ALT(Cri)114; 1994CriLJ2606

**Judge :** T.S. Arunachalam and ;Thangamani, JJ.

**Appeal No. :** Criminal Appeal No. 1109 of 1986

**Appellant :** Pitchaimani and Others

**Respondent :** The State

**Advocate for Def. :** B. Sriramulu, Public Prosecutor

**Advocate for Pet/Ap. :** N. Dinakar for M/s. K.R. Thiagarajan, Adv., ;S. Shaul Hameed and ;S. Vellusamy, Advs.

**Judgement :**

**Thangamani, J.**

1. Appellants are accused 1 to 3 in S.C. No. 110 of 1986 on the file of learned Sessions Judge, Tirunalveli. They were charged as under on the allegation that on account of prior enmity at about 2.30 p.m. on 26-9-1985 at Pirai Kudiyiruppu village in furtherance of their common intention to commit the murder of one Anandapandi Nadar, A-1 Pitchaimani beat on his head with a pounder (vernacular matter omitted), while A-2 Ponnuswamy cut on his right flank and A-3 Muthammal

cut on his 'Nadi' with aruvals and caused his death. When his son PW 1 Baskaran tried to prevent the assault, A-1 Pitchaimani beat him with pounder and A-2 Ponnuswamy cut him with aruval and caused injuries.

Charge No. Accused Nature of charge

I A-1 under section 302 IPC

II A-2 and A-3 under section 302 r/w 34 IPC

III A-1 under section 324 IPC (for causing hurt to P.W. 1 Baskaran)

IV A-2 under section 324 IPC (for causing hurt to P.W. 1 Baskaran)

2. The prosecution examined 18 witnesses, filed 29 exhibits and marked 8 material objects. They disclose these facts :- A-3 Muthammal is the mother of A-1 Pitchaimani and A-2 Ponnuswamy. Their house is southeast of that of deceased Anandapandi Nadar, PW 1 Baskaran and PW 2 Azhaguvel are the sons of the deceased. Often the cattle of the accused used to graze and damage the garden of the deceased. Twenty days prior to the occurrence PW 1 Baskaran and PW 2 Azhaguvel went to the house of the accused and told them to tether their cattle properly. A-1 Pitchaimani found fault with them for making the complaint. On 26-9-1985 Thursday when the cattle of the accused again grazed in the banana-field of the deceased, PW 1 Baskaran drove them away. At about 2.30 p.m. A-1 Pitchaimani and A-2 Ponnuswamy came to the house of the deceased and challenged that if any one would dare to drive away their cattle, they would be murdered. On hearing this deceased Anandapandi, PW 1 Baskaran and PW 2 Azhaguvel came out of their house. Anandapandi asked A-1 Pitchaimani why he was scolding them instead of keeping the cattle within bounds. Thereupon A-1 Pitchaimani beat on the head of Anandapandi with MO 1 pounder in his hand. Anandapandi picked up a stick nearby and beat on the head, right hand and leg of A-1 Pitchaimani. When Pitchaimani retreated, A-2 Ponnuswamy cut with MO 2 Vettaruval on the right flank of Anandapandi. Anandapandi fell down. A-2 Ponnuswamy raised his aruval to cut again. When PW 1 Baskaran tried to ward off the blow, the cut fell on the left side of his head. A-3 Muthammal cut Anandapandi

on his 'nadi' with MO 3 aruval. A-1 Pitchaimani also beat Anandapandi on his right shoulder, right hand, right side of the back and right leg. PW 3 Joyapandi whose house is on the rear side of that of the deceased and PW 2 Azhaguvel shouted not to attack. All the three accused ran towards south with their respective weapons. PW 2 Azhaguvel went to Mani Nagar in a cycle and brought a taxi driven by PW 5 Arunachalam and took Anandapandi and PW 1 Baskaran to Govt. Hospital at Kalan Kudiyiruppu. PW 6 doctor examined the injured in the said hospital at 3.45 p.m. Anandapandi Nadar was unconscious. The persons who accompanied him told the doctor that at about 2.30 p.m. on that day at Mela Theru in Pirai Kudiyiruppu village the injured was assaulted by two men and one woman with weapons like poulder and aruval. The doctor found these injuries on Anandapandi :-

- (1) one incised wound 1 1/2' x 1 1/2' skin deep on right hip.
- (2) one incised wound 1' x 1' skin deep in chin.
- (3) one contusion 2' x 3' on centre of skull (head) (? fracture skull).

Ex. P. 6 is the wound certificate issued by him.

3. There after PW 6 doctor examined PW 1 Baskaran who was conscious. He informed the doctor that he had sustained the injury due to assault with poulder and aruval like weapons by two men and one woman at Mela Theru in Pirai Kudiyiruppu village at 2.30 p.m. on that day. On examination the doctor noticed these injuries on him :-

- (1) one vertical incised wound 4' x 1/2' skull deep on head just 6' above left eye.
- (2) one laceration 1/2' x 1/2' with contusion 1 1/2' x 1 1/2' on right shoulder.
- (3) one laceration 1/2' x 1' with contusion on right upper arm.
- (4) one contusion 2' x 1' on right fore-arm.
- (5) one contusion 2' x 2' on right ankle joint.

The patient was admitted in male ward for observation. The doctor is of opinion that the above injuries are simple in nature. Ex. P-7 is the wound certificate issued by him. The injuries could have been caused at the time and in the manner alleged.

4. On the same day at 3.45 p.m. A-1 Pitchaimani appeared before PW 6 doctor on his own accord, for certain injuries alleged to have been caused by a known person at Mela Theru in Pirai Kudiyiruppu village at about 2.30 p.m. on that day. The doctor found these injuries on him :-

(1) one laceration 1/2' x 1/2' on head just 6' above left eye.

(2) one contusion 1' x 1' just back of right ear.

(3) one contusion a 1 1/2' x 1 1/2' on right fore-arm.

(4) one contusion 1 1/2' x 1' on right hip joint.

The injuries are simple in nature. The patient complained of chest pain and he was admitted in male ward for observation. Ex. P-8 is the copy of the relevant Accident Register.

5. While the doctor arranged to send Anandapandi Nadar to Tirunelveli Medical College Hospital, he admitted PW 1 Baskaran as an in-patient in Kalan Kudiyiruppu Hospital itself. He sent Ex. P-9 accident intimation in respect of Anandapandi Nadar and Ex. P-10 accident intimation in respect of PW 1 Baskaran to the Police Station at Kulasekarapattinam. PW 13 Grade-I Constable received these intimations at 9.00 p.m. When he was incharge of the Police Station. He proceed to Government Hospital, Kalan Kudiyiruppu and learnt that Anandapandi Nadar had already been sent to Tirunelveli Medical College Hospital for further treatment. So he examined PW 1 Baskaran who was an in-patient there at 9.45 p.m. and recorded his statement Ex. P-1. At 10.00 p.m. he also recorded the statement of A-1 Pitchaimani who was also an in-patient there. Ex. P-23 is the said statement. On return to the station PW 13 registered Ex. P-1 complaint as his Station Crime No. 348/85 under sections 323, 324 and 325, I.P.C. He prepared Ex. P-24 F.I.R. and despatched the copies of Exs. P-23 and P-24 to

Meyonapuram Police Station since the scene of crime came within the jurisdiction of that Police Station. He sent Exs. P-1, P-24, P-9 and P-10 to J.S.C.M., Tiruchendur which reached the Magistrate at 1.00 p.m. on 27-9-1985.

6. In the meanwhile, Anandapandi was admitted in Tirunelveli Medical College Hospital as in-patient at 6.45 p.m. on 26-9-1985 by PW 7 doctor who was on duty there. Anandapandi was unconscious. Ex. P-11 is the copy of the Accident Register. At 11.30 p.m. Anandapandi expired and Ex. P-12 is the death intimation sent to the Police Out-Post. On receipt of the same PW 12 Head Constable made a G.D. entry and passed on the information to Sathankulam Police Station over phone. He was informed that the scene of crime came within the jurisdiction of Meygnapuram Police Station. He tried in vain to contact Meygnapuram Police Station. He made a G.D. entry about this at 1.45 a.m. on 27-9-1985. Only at 7.00 a.m. he was able to contact Sathankulam Police Station over V.H.P. At 8.00 a.m. PW 14 Constable came to Police Out-Post and received Ex. P-12 death intimation and Ex. P-22 report and brought them to Meygnapuram Police Station at 1.00 p.m. The incident in Ex. P-24 F.I.R., had been registered as Crime No. 135/85 of Meygnapuram Police Station. Ex. P-25 is the Express F.I.R. and Ex. P-28 is the altered Express F.I.R. At 3.00 p.m. this Constable handed over the copies of the F.I.Rs. to PW 18 Inspector. PW 15 Constable took Exs. P-25 and P-28 F.I.R. and entrusted the same with J.S.C.M., Tiruchendur at 3.30 p.m. on the same day.

7. Thereafter PW 18 Inspector took up investigation, proceeded to Government Headquarters Hospital, Palayamkottai and held inquest over the dead body of Anandapandi Nadar from 5.30 p.m. to 10.30 p.m. At that time he examined PWs 2 and 3. Ex. P 29 is the inquest report prepared by him. He made Ex. P 14 Requisition for postmortem through PW 16 Constable. On 28-9-1985 he examined PW 12 Head Constable and PW 1 Baskaran. He verified the investigation so far done by PW 17 Sub-Inspector.

8. On the same day at 10.00 a.m. PW 9 Tutor in Forensic Medicine in Tirunelveli Medical College commenced the post-mortem and noted these injuries :-

1. Sutured incised wound 1 cm long muscle deep on the left side of chin 4 cm away from midline.

2. Sutured incised wound 3 cm long muscle deep horizontally oblique on the back of right side of waist 10 cm away from midline 4 cm above the hipbone.

3. Diffused contusion on the left frontal and parietal region of the head. On dissection bruising of inner aspect of tissue of scalp in the frontal, left parietal and occipital region communitied. Fracture of frontal bone on the left side and fracture of left parietal bone diffused extradural and subdural haemorrhage over the left frontal and parietal lobes of brain. Fracture of left middle cranial fossa of base of skull.

Heart all chambers contained a little blood. Coronaries patient. Lungs congested and odomatous. Stomach and bladder empty. Liver, spleen and kidneys showed early decomposition changes.

In the opinion of the Doctor, the deceased would appear to have died of shock and haemorrhage due to injury No. 3 sustained by him. Ex. P 15 is the post-mortem certificate issued by him. After the post-mortem was over, PW 16 Constable entrusted the body to the relatives. He removed M.O. 5 dhoti and M.O. 8 waist cord and handed them over in the Police Station.

9. On 30-9-1985 PW 18 Inspector examined PWs 14, 15, 16 and 17. On 4-10-1985 at 4.00 a.m. he arrested A-2 and A-3 in front of Pillaiyar Temple in Kummadikottai. A-2 Ponnusamy gave a confession statement, the admissible portion or which is Ex. P 4. Pursuant to the same he took the Police party to the Northen bank of river and produced M.Os. 2 and 3 aruvals buried under a karuvel tree. The Inspector seized them under Ex. P 5 in the presence of PW 4 Thalaiyari. The Thalaiyari has attested the mahazar. At 4.00 p.m. on that day the Inspector arrested A-1 Pichaimani in Sathankulam Road. He gave a confession statement, the admissible portion or which is Ex. P 20. Pursuant to the same he took the Inspector and others near Rathinasamy Nadar coconut grove and produced the M.O. 1 ulakkai buried in a bush under a karuvel tree. The Inspector Seized the same under Ex. P 21 mahazar attested by PW 11 V.A.O. on 9-10-1985 the Inspector examined PW 7 and PW 9. On 21-10-1985 he examined PWs 5, 6 and 13. On 28-10-1985 he gave Ex. P-16 Requisition in J.S.C.M. Court, Tiruchendur to send the M.Os. for chemical examination. PW 10 the Head Clerk of the Court

caused them to be sent under the original of Ex. P 17 covering letter. Exs. P 18 and P 19 are the reports of the Chemical Examiner and Serologist. On 29-10-1985 the Inspector examined PW 8. On completion of investigation, he laid charge-sheet against the accused on 5-12-1985.

10. When examined under section 313 Cr.P.C., the accused denied the allegations against them and also stated that they did not own any cattle. A 1 Pitchaimani also submitted a statement in writing mentioning that in his village there are two sub castes in Nadar Community. Deceased Anandapandi Nadar belonged to Nadar caste which is superior to Nadar. Since the accused are Nadars, they used to submit themselves to the authority of Nadars. During the Amman festival of their village in that year A 1 Pitchaimani raised his objection for sacrifice of goats. Deceased Anandapandi Nadar and his men insisted that sacrifice should be given. On 26-9-1985 at 2.30 p.m. deceased Anandapandi Nadar and his sons PW 1 Baskaran and PW 2 Azhaguvel came to his house, beat him and damaged the house expressing how A 1 who hails from Nadar caste would oppose them. They beat him with sticks on his hand, hip and head. There was rioting in his street and in that process Anandapandi Nadar and his son sustained injuries. PW 3 Jayapandi is a permanent servant of Anandapandi Nadar. He is a rogue. On 27-9-1985 Police arrested all the three accused in Kalan Kudiyiruppu Hospital. While A 1 Pitchaimani was undergoing treatment there, his brother A 2 Ponnusamy and mother A 3 Muthammal were attending on him in the hospital. At the instance of one retired Constable Somasundaram Nadar who is relation of deceased Anandapandi Nadar, the case has been foisted against them.

11. While the trial Court found A 1 Pitchaimani guilty of all the charges, it held under the second charge A 2 and A 3 were liable for only under section 324 I.P.C. However, it has not expressly stated that on the second charge A 2 and A 3 were acquitted under Section 302 read with Section 34 I.P.C. The conviction and sentence are as under :-

Charge No. Accused Nature of punishment I A-1 under section 302 I.P.C. (imprisonment for life). II A-2 under section 324 I.P.C. (fine of Rs. 250/- in default to undergo R.I. for six months) A-3 under section 324 I.P.C. (fine of Rs. 250/- in

default to undergo R.I. for three months) III A-1 under section 324 I.P.C. (R.I. for six months) IV A-2 under section 324 I.P.C. (fine of Rs. 250/- in default to undergo R.I. for six months)

The Sessions Judge has also directed that out of the fine amount Rs. 500/- has to be paid to PW 1 Baskaran as compensation. Aggrieved by the above conviction and sentence, the accused have preferred this appeal.

12. Learned counsel for the appellants submitted that the evidence on record does not lend support to the prosecution version regarding the manner in which the deceased received the injuries. On the other hand, the defence version that there was a village Meeting in which the deceased scolded A 1 Pitchaimani and there was a rioting and during the course of the same injuries were sustained is more probable. If the defence version is accepted, we can spell out the exercise of right of private defence which entitles the appellants of acquittal. The discrepancies in the evidence go to the root of the matter and therefore, the benefit of doubt must be given to the appellants.

13. P.W. 1 Baskaran, PW 2 Azhaguvel and PW 3 Jayapandi are eye witnesses to the occurrence. They speak about the assault that took place at about 2-30 p.m. on 26-9-1985 in front of their houses. While PWs 1 and 2 are the sons of deceased Anandapandi Nadar, PW 3 is stated to be his henchman. Suggestions have been put to PW 3 during his cross-examination that he is involved in a number of theft cases. While he denies them, his evidence is to the effect that he has been falsely implicated in one assault case and one theft case. The evidence of PWs 1 and 2 cannot be rejected in toto for the reason that they happen to be the sons of the deceased. We have only to scrutinise their versions in a very careful and cautious manner. PW 1 has sustained injuries during the incident. And so his presence at the scene of crime cannot be disputed. Nothing has been elicited in the cross-examination of PWs 1 to 3 as to why we should not act upon their testimonies. It is significant to note that PW 6 Doctor had examined deceased and PW 1 Baskaran for their injuries within one hour and fifteen minutes of the occurrence. And he was informed by injury PW 1 that they were assaulted by two men and one women with weapons like ulakkai and aruval at 2.30 p.m. on that

day. The Doctor also says that deceased Anandapandi Nadar was accompanied by PWs 1 and 2 when he came to the hospital. The narration of the incident as spoken to by PWs 1 to 3 in the witness box is practically the same as that contained in Ex. P 1 F.I.R. which had been lodged by PW 1 Baskaran at 9.45 p.m. on the same day of the incident. This F.I.R. also makes mention of the prior estrangement between the deceased and first appellant on account of grazing of cattle. The sustaining of injury by PW 1 Baskaran and the presence of PW 2 Azhaguvel and PW 3 Jayapandi also find a place in this complaint. And it has reached the Magistrate at 1.00 p.m. on 27-9-1985. The explanation of PW 13 Constable that because the scene of crime happened to be within the jurisdiction of Meygnanapuram Police Station and that the complaint was registered under section 323 I.P.C. only, he did not send the same straightaway to the Magistrate's Court and instead he despatched them to Meygnanapuram Police Station is quite acceptable.

14. The evidence of the eye witnesses corroborated by the earliest version in Ex. P 1 complaint as well as the statement to PW 6 Doctor as found in Ex. P 6 wound certificate also gets support from the medical evidence in the eye witnesses PWs 1 to 3 A-1 Pitchaimani hit on the head of Anandapandi Nadar with M.O. 1 ulakkai, A 2 Ponnuswamy cut with M.O. 2 aruval on his right flank. When the deceased fell down. A 3 Muthammal cut with M.O. 3 aruval on his nadi. A 1 Pitchaimani beat with the same M.O. 1 ulakkai on his right shoulder, right side of the back and right leg. When PW 1 tried to intervene A 2 Ponnuswamy assaulting his father, the blow fell on the left side of his head. As per the evidence of PW 6 Doctor and his wound certificate Ex. P-6, he has found cut injuries on the right side of the hip and nadi. There are also contusion on the head of the deceased. This Doctor had also found abrasions and contusion on the right shoulder right hand right leg besides a cut injury on the left side on the head of PW 1 Baskaran. In the opinion of the doctor the injuries could have been caused at the time and in the manner alleged. The evidence of PW 9 Post-mortem Doctor also corroborates the ocular Versions of PWs 1 to 3.

15. Both PW 6 and PW 9 Doctors state that the deceased could not have run after receiving of the injuries. Learned counsel for the appellants submits that this rules

out the possibility of the deceased being chased and cut. So the Version of PW 1 in cross-examination that his father chased A 1 Pitchaimani from the North after the assault could not have been true. Learned counsel for the appellants next pointed out that as per the admission of PW 1 Baskaran in his cross-examination, his brother PW 2 Azhaguvel is in the habit of working in his farm from morning to evening. He rarely comes to the house for lunch. So it is quite unlikely he was present at the time of the incident which took place at about 2.30 p.m. in front of the house. PW 3 Jayapandi states in his evidence that there was criminal case against himself and Anandapandi Nadar that they committed theft of the waist cord of one Sugunavathi. Whereas PW 1 Baskaran denies knowledge of dispute between his father and Jayapandi Nadar in connection with the missing of waist cord of Sugunavathi. This is also one of the factors as per learned defence counsel which goes to show that the eye witnesses are not speaking the truth. These and other minor variations pressed very much by learned counsel for the appellants cannot affect the veracity of the eye witnesses in any manner. As laid down by the Summit Court in *Sivaji v. State of Maharashtra*, : 1973 CriLJ1783 , when scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in non-essential parts cannot militate against the veracity of the core of the testimony, provided there is the impress of truth and confirmity to probability in the substantial fabric of testimony delivered. The evidence of the eye witnesses herein corroborated by the earliest versions of the incident and medical evidence as referred to above amply establish that the assault part of the occurrence did take place more or less in the manner as spoken to by them.

16. It is the next argument of learned counsel for the appellants that deceased as well as PW 3 Jayapandi are rowdies. They belong to the superior sect in the Nadar community. They were the aggressors who started the rioting. Exs. P 7 and P 8 medical certificates disclose that as per the earlier version provided by the victims the incident had taken place at Mela Theru. PW 17 Sub-Inspector admits in his cross-examination that Mela Theru is that shown in Ex. P 27 plan as East-street which is in front of the houses of A 1 and A 2. So the scene of crime is not in front of the house of PWs 1 and 2 as stated by them in the witness box. However, we are not impressed with this argument. We find from Ex. P 27 that the house of

deceased Anandapandi Nadar is situated 25 feet North-West of the site where the incident is stated to have taken place. Even in Ex. P 1 complaint PW 1 has categorically mentioned that on that afternoon when he and his father came out of their house on hearing the shouting of A 1 Pitchaimani, immediately the latter beat on the head of his father with M.O. 1 ulakkai. It has not been suggested to any of the eye witnesses that street marked as East-West street in the plain is the place of occurrence. P.W. 17 is only a Sub-Inspector and not a native of that hamlet. So much cannot be made of his version reading the name of the street.

17. PW 1 Baskaran states in his evidence that theirs and four others are the only houses of Nilaimaikara Nadars. The other families in their village which comprise about 100 houses are of Panaiyeri Nadars. Between the two sects there will not be any marriage alliance. They would not even give water to Panaiyeri Nadars. The latter would address Molaimaikara Nadar as 'Mudhalali' Panaiyeri Nadars are under the control of Nilaimaikara Nadars. They would not dispute anything said by the Nilaimaikara Nadars. A village assembly was to be convened between 12 noon and 2.00 p.m. on that day in connection with temple festival. But the meeting did not take place. People came to that meeting. In the meanwhile, the rioting took place. In that meeting while one section demanded that there should be goat sacrifice. The other section opposed the same. Accused 1 and 2 are important persons in Panaiyeri Nadar sect. His senior paternal uncle Soma Nadar is a former Police Constable. And we find from the records that on 26-9-1985 at about 3.45 p.m. along with deceased Anandapandi Nadar and PW 1 Baskaran A 1 Pitchaimani was also examined by PW 6 Doctor at Government Hospital, Kalan, Kudiyiruppu. A 1 Pitchaimani has stated to the Doctor that the injuries on him were caused by a known person at Mela Theru in Pirai Kudiyiruppu village at about 2.30 p.m. on that day. These factors are pressed into service by learned counsel for the appellants in support of their theory that the deceased and PW 1 Baskaran had sustained the injuries during the rioting to which the appellants are not responsible. However, from this back drop to the case alone we can neither infer that Anandapandi and his son were assaulted by some unknown persons during the rioting on the day nor we can spell out that the appellants acted in exercise of the right of private defence. The testimony of PW 1 discloses that the occurrence commenced when A 1 Pitchaimani beat the deceased with M.O. 1 ulakkai on his

head. Thereupon the deceased picked up M.O. 4 stick nearby and beat on the neck, hand and leg of A 1 Pitchaimani. On seeing this A 2 Ponnuswamy came running and cut Anandapandi. Thereafter A 3 Muthammal came there and cut the 'nadi' of the deceased with aruval in her hand. So, it is quite likely that initially there was a wordy duel between deceased Anandapandi and A 1 Pitchaimani and what followed was without pre-meditation in a sudden quarrel. There is also nothing on record to indicate that the first appellant either took undue advantage or we have seen M.O. 1. It is not the usual rice pounder but a half-size stout at one end, wooden stick. So, we are of the view that this is a case covered by Exception 4 to Section 300 I.P.C. and hence what is made out is only culpable homicide not amounting to murder. We can only attribute knowledge to the first appellant that his act is likely to cause death and it cannot be said that he had any intention to cause death or to cause such bodily injury as is likely to cause death. And so the offence is punishable under section 304 (Part II) I.P.C. The conviction and sentence passed by learned Sessions Judge on charge Nos. 2, 3 and 4 do not call for interference.

18. In the result, the appeal is allowed in part and the conviction and sentence passed by learned Sessions Judge on charge No. 1 under section 302 I.P.C. are set aside A. 1 is found guilty on this charge under section 304 (Part II) I.P.C., convicted and sentenced to undergo R.I. for five years. In other respects, the appeal is dismissed.

19. Order accordingly.

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