Guruswamy vs State Of Tamil Nadu on 30 November, 1978

Equivalent citations: AIR1979SC1177, (1979)3SCC797, AIR 1979 SUPREME COURT 1177, (1979) 2 SCJ 275, 1979 CRILR(SC MAH GUJ) 95, 1979 SC CRI R 131, 1979 SCC(CRI) 879, (1979) 1 SCWR 87, (1979) MAD LJ(CRI) 636, 1979 (3) SCC 797

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Bench: O. Chinnappa Reddy, P.S. Kailasam

JUDGMENT

P.S. Kailasam, J.

1. This appeal is preferred by special leave against the judgment of a Division Bench of the Madras High Court in Criminal Appeal 373 of 1973 finding the appellant guilty on two counts under Section 302, Indian Penal Code and sentencing him to death on each count. The case for the prosecution is as follows:

> Petha Gounden who will be referred to as the first deceased, is the father of the appellant Guruswamy and the second deceased Doraiyan alias Kalianna. There were two other accused before the sessions court, the second accused being the brother-in-law of the appellant having married his sister. The third accused is a cousin and the friend of the second accused. Second and third accused were acquitted by the High Court of the offence under Section 302, Indian Penal Code but were convicted of minor offences. There is no appeal against their conviction by the second and third accused.

2. Deceased Petha Gounden owned about 10 acres of land and about 13 years before the occurrence, he divided those lands between the appellant and the second deceased, Doraiyan alias Kaiannan, giving them each 5 acres. The deceased expected each of the sons to pay him Rupees 250/- per year for his maintenance, Petha Goundan received his maintenance for sometime but later started living with one or the other of the sons, collecting the maintenance from the other son. Later, Petha Goundan wanted his share of the property from the two sons for himself and there was some misunderstanding over this request. The appellant was not willing to hand over his share of the property. There was misunderstanding between the appellant on the one side and Petha Goundan and the second deceased Doraiyan alias Kaliannan.

3. On the day of occurrence i.e. on 26-8-1972 at about 4 p.m. the appellant came and picked up a quarrel objecting to the cattle trough belonging to Doraiyan alias Kaliannan being kept under a itchi

tree to the west of the house as that site belonged to the appellant. Doraiyan removed the trough. At about sunset time. P.W. 2 the cousin of the deceased Petha Goundan, came to Petha Goundan and was talking with him. P.W. 1 the wife of the second deceased Doraiyan served food for all the members of the household. After serving the meals she was sitting in front, of her house, while the first deceased Petha Goundan and P.W. 3 were picking cotton from cotton pods, near a tube-light that was burning. P.W. 1 and deceased Doraiyan were inside their hut along with their son Murugaiyan. While P.W. 1 and the deceased were talking and picking cotton from cotton pods, at about 9 p.m. the appellant and the other accused came from the west into the courtyard of the house, The appellant was armed with a stout stick and the third accused with a whip stick. The appellant stood on the west and called out to Doraiyan alias Kaliannan the second deceased saying "come on, I will finish the father and the son." It is stated that the appellant caught hold of P.W. 1 by her tuft and shook her. Doraiyan, the second deceased shouted to the appellant as to why he was catching hold of the woman and dragging her, P.W. 3 prevented the second deceased from coming out in order to avert the fight. The first deceased Petha Goundan came out and proceeded towards the appellant who was catching hold of P.W. 1. At that time, it is stated, that the appellant who was armed with Dhonnai (Stout Stick) beat the deceased Petha Goundan twice or thrice on the head whereupon Petha Goundan fell down and even after that the first appellant beat Petha Goundan on the left side of the chest with the stick. When the second deceased Doraiyan came running he was caught hold of by the second accused and the third accused. The appellant beat Doraiyan with the stick on the face and Doraiyan fell down. After inflicting injuries, the appellant and the two other accused went away. The incident was witnessed by P.W. 1 the wife of the second deceased and P.W. 3 the cousin of Petha Goundan and P.W. 4 the son of the second deceased and P.W. 1. Soon after the incident, P.W. 1 went to the village Munsif, who is living half a mile away from the scene and lodged the complaint at 10 p.m. i.e. within an hour of the occurrence. The village Munsiff recorded the F.I.R, Ex.P.1, obtained the thumb impression of P.W. 1, prepared the necessary copies and sent them to the Police and to the Magistrate. The F.I.R. was received at the Police Station which is about 3 miles away, at about 12-15 hours and by the Magistrate at about 2 a.m. Immediately, after the receipt of the F.I.R. the sub-Inspector proceeded to the scene, prepared the necessary papers, seized the blood stained earth and other materials and held the inquest.

4. The defence of the appellant is that his father, Petha Goundan, the first deceased, was in illicit intimacy with P.W. 1 wife of the second deceased and on the night of the occurrence when the appellant was sleeping in his house, he heard the noise of some confusion in the courtyard, woke up and came out and saw his brother Doraiyan, the second deceased, beating his father the first deceased whereupon he took out the stick and beat Doraiyan on the head With it and next morning he went to Bhawaml and appeared before the Sub-Inspector.

5. The learned Sessions Judge, and the High Court have accepted the evidence of P.W. 1, the wife of second deceased, P.W. 3 the cousin of the first deceased Petha Goundan and P.W. 4 son of the second deceased and P.W. 1 and found the appellant guilty of the offence of murder on both counts. The trial Court as well as the High Court rejected the defence set up by the appellant as totally unacceptable. Mr. K.S. Ramamurthi, learned Counsel for the appellant submitted that the case for the prosecution bristles with improbabilities and should not have been accepted. He referred to the evidence of P.W. 1 wherein she has stated that the village Munsiff came to her house and then

recorded the F.I.R. at 12 midnight. He submitted that according to the village Munsiff, the F.I.R. was recorded at about 10 p.m. in his house which is contrary to the evidence of P.W. 1. It is seen from the evidence of the Sub-Inspector that the report was received at 12-15 midnight by the Sub-Inspector at Andiyur Police Station which is at a distance of 3 miles. If the report was taken in the village at 12 mid-night, it would not have reached the Police Station at 12-15.

6. We, therefore, agree with the Courts below that being an illiterate woman P. W. 1 made a mistake about the recording of the F.I.R. in her house.

7. P.W. 1 the wife of the second deceased, is a natural witness for the occurrence, as she was living in her house with the second deceased, and P.W. 4. She sustained number of injuries and her presence at the scene cannot be doubted. The Courts below have accepted her evidence and we see no reason for not concurring with their views. The F.I.R. was lodged without any delay. In the F.I.R., the presence of P.W. 3, the cousin of Petha Goundan, is mentioned. The evidence of P.W. 3 has also been accepted by the courts below.

8. Learned Counsel submitted that the name of P.W. 4 is not in the F.I.R. and was not examined during the inquest. Inspite of this defect the Courts below accepted P.W. 4's statement P.W. 4 is the son of second deceased and P.W. 1 and it is only natural he was in the house and witnessed the occurrence. On consideration of the prosecution evidence, we have no hesitation in agreeing with the courts below. The defence, however, is totally unacceptable and highly improbable. The incident narrated by the appellant is far from being probable. It is most unlikely that P.W. 1 was intimate with her father-in-law. The story of the defence that the appellant came to the rescue of his father from the second deceased and acted in private defence, reads more like fiction, The defence was rightly rejected by the courts below.

9. We confirm the conviction of the appellant on the charge of murder. The offence was committed during a family quarrel and though the victims are the father and brother of the appellant, we do not think, in the circumstances of the case, the extreme penalty is called for. The appellant has also been under sentence of death for a period of six years. But in reducing the sentence to imprisonment for life, we feel that the widow P.W. 1 and her minor children should be compensated for the loss they have suffered by the death of the second deceased. We, therefore, while reducing the sentence to imprisonment of life, impose a fine of Rs. 10,000/- which if collected will be paid to P.W. 1 and her children. This Court has held in Sarwan Singh v. State of Punjab that it is only appropriate to direct payment of compensation to the dependants of the victim by the accused who has the capacity to pay. In case of murder, it is only fair that proper compensation should be provided for the dependants of the deceased. The appeal of the appellant is dismissed and conviction confirmed, but the sentence of death is set aside and instead sentence of imprisonment of life and fine of Rs. 10,000/- is imposed. In default of payment of fine, the appellant will undergo rigorous imprisonment for a period of one year.