Supreme Court of India
Seriyal Udayar vs State Of Tamil Nadu on 25 March, 1987
Equivalent citations: AIR 1987 SC 1289, 1987 CriLJ 1058, 1987 (2) Crimes 57 SC, JT 1987 (1) SC 789, 1987 (1) SCALE 589, (1987) 2 SCC 359, 1987 (1) UJ 675 SC
Author: G Oza
Bench: G Oza, V Khalid
JUDGMENT G.L. Oza, J.

1. This appeal arises out of the conviction of the accused-appellant No. 1 under Section 302 and also under Section 447 sentenced to imprisonment for life and 3 months rigorous imprisonment respectively whereas Accused No. 2 was sentenced to one year rigorous imprisonment under Section 324 and 3 months under Section 447 I.P.C. All sentences to run concurrently awarded by the High Court of Madras in an appeal against acquittal filed by the State. The two accused were tried before Sessions Judge, Pudukkottai in Sessions Case No. 5 of 1976 for offences under Sections 447 and 302 read with Sections 34 and 324 I.P.C. This appeal has been preferred only by the present appellant who was sentenced to imprisonment for life and he preferred this appeal from jail. It appears that the other accused has served out the sentence and has chosen not to prefer the appeal.

2. According to the prosecution PW 1 Santhiyagoo was residing with his mother Arokiya Mari and his brothers alongwith Arokiyaswami the deceased in this case.

3. The accused appellant No. 1 had married Upakaramari the elder sister of PWs 1 and 2 and the deceased. Accused No. 2 is the son of the accused No. 1. The accused on the one hand and P.W. 1 and his brothers on the other owned agricultural lands adjacent to each other with a ridge separating their lands.

4. It is alleged that a day prior to the occurrence i.e. on Monday, 1st of December, 1975 at about 6 A.M. P.W.1 and P.W. 2 and the deceased were carrying out agricultural operations in their fields which is immediately to the east of the land belonging to the accused. Arokiyaswami was ploughing their land while P.W. 1 was breaking the clots with the spade and P.W. 2 who is a boy of ,13 years and brother of P.W. 1 and Arokiyaswami was standing under a neem tree close-by. During the course of these operations Arokiyaswami, the deceased scrapped portion of the ridge between their land and the land belonging to the accused. According to the prosecution although the accused persons were also present in their field, but this scrapping of the portion of the ridge by the deceased was not noticed by the accused persons at that time.

5. Next day i.e. on 2.12.76 at about 6 A.M., P.Ws 1 and Arokiyaswami the deceased went to their field and Arokiyaswami started ploughing. At that time both the accused came there each carrying Judgment dated March 25, 1987 in Criminal Appeal No. 285 of 1978. a spade and appellant No. 1 said to the deceased as to why he cut the bund yesterday when there was none and further said that you cut it now and they will see him. Saying this he struck the spade by the sharp side on the left wrist of the deceased causing an injury and thereafter second blow was inflicted causing injury a little above the left elbow. It is alleged that at this moment the blade of the spade slipped off and the blade fell on the ground. Arokiyaswami, it is alleged, ran towards his house but appellant No. 1

persued him with the handle of the spade in his hand. At that time accused No. 2 inflicted a blow by the sharp side of the spade on P.W. 1 whereas appellant No. 1 after persuing Arokiyaswami at some distance hit him on his head with the handle. Arokiyaswami is said to have caught hold of the handle but appellant No. 1 wrested it again and gave a blow on the head as a result of which Arokiyaswami fell down.

6. According to the prosecution this incident was witnessed by P. Ws 1, 2 and 3 who owns land to the South of the land belonging to the accused and P. Ws. 1 and 2 and according to whom he was also in his field at the time and came on the scene of occurrence hearing hue and cry from the field of Arokiyaswami. Similarly P.W. 4 who also has a field in that area after hearing the cry reached on the spot and witnessed the incident.

7. Immediately after Arokiyaswami fell on the ground that the two accused ran away and P. Ws 1 and 4 carried Arokiyaswami to the house and then P. Ws. 1 and 2 took him in a cart belonging to their uncle to the Government Hospital where P.W. 5 the Civil Assistant Surgeon examined Arokiyaswami at 8. 30. A.M. and found on his per-son a depressed fracture of right side of the skull at frontal bone size 2" x 2", a cut injury on the left wrist at the dorsal aspect 1" in length skin deep and a cut injury on the left elbow 1" in length skin deep. Arokiyaswami was unconscious.

8. The doctor also examined P.W. 1 and found one linear abrasion 4" in length in the left forearm at lower one-third. Arokiyaswami was sent to Padukkottai Government Hospital.

9. At about 8.45 A.M. P.W. 11 the Sub-Inspector of Police on receipt of a phone message from the Government Hospital about Arokiyar swami having been admitted in the hospital, reached the hospital. The Sub-Inspector recorded the statement of P.Ws 1 and 2 and went to the Police Station and registered an offence under Section 307. Later he went back to the hospital and proceeded with the investigation.

10. Arokiyaswami expired in the hospital at about 12.30 P.M. on the same day and an intimation about it was sent to the Police Station where P.W. 11 altered the offence into Section 302. After investigation the charge-sheet was filed and on trial the learned Sessions Judge by a judgment dated 28.4.76 acquitted the two accused from the charges levelled against them.

11. High Court on appeal against acquittal after re-assessing the evidence convicted the two accused.

12. In the statement recorded under Section 313 the two accused in their statements stated that when the two accused were on their field and appellant No. 1 was ploughing his field at that time P.W. 1 armed with a spade and deceased Arokiyaswami armed with a aruval came there, It is further stated that the two Arokiyaswami and P.W. 1 attempted to put up a channel towards the north adjacent to the west of the common ridge with a spade. At that time the appellant No. 1 asked him as to why he was doing it as since the date of division there was no channel of that kind and both the parties have been living peacefully. It is alleged that P.W. 1 and the deceased retorted by saying that they will do so and the appellant has no right to question them. On this it is alleged that the accused snatched the spade from P.W. 1 and in this process P.W. 1 sustained a scratch injury on his left

hand. At that time Arokiyaswami is alleged to have inflicted an injury with his sharp aged aruval on the hand of appellant No. 1 who warded off that blow with his left hand which resulted in an injury on the left finger and left index finger. The deceased again gave a blow which appellant No. 1 warded off with the spade which he had snatched from P.W. 1 by holding it in his right hand and again he received an injury on the lower portion of the right thumb. Seeing this apprehending danger according to the appellant he out of grave and sudden provocation and in exercise of right of private defence beat Arokiyaswami with the spade in his hands and Arokiyaswami attempted to snatch away the spade from him and in this scuffle Arokiyaswami sustained injuries by the blade of the spade. Arokiyaswami then attempted to attack the appellant No. 1 by the same spade which he had snatched. Appellant attempted to obstruct the same and therefore Arokiyaswami the deceased gave a blow on the head of accused No. 2 and he started bleeding. It is all edged that on this the two appellants ran towards their house but they were chased to some distance by the deceased and P.W. 1. They also stated that they got their injuries treated by one doctor Simiyon and after-wards knowing about the fact that Arokiyaswami and Santhiagoo were admitted in the hospital and the Police was in search of them. They surrendered before the Judicial II Class Magistrate, Pudukkottai. Accused No. 2 also more or less gave a similar statement.

13. The accused also examined D.W. 1 Dr. Domic Swaminathan about the injuries on their person. Learned Sessions Judge after considering evidence examined by the prosecution observed that the story of the first part of incident on 1st December appeared to be just an improvement as in the context of relations and no history of bad blood, if there was something which happened on 1st December, it might not have created any trouble on the second day. The learned Judge also reached this conclusion on the basis of the scrutiny of the evidence itself.

14. As regards the main incident, the learned Sessions Judge came to the conclusion that the two witnesses who are said to be independent have not been able to clearly state as to how the incident commenced as apparently they must have reached the place of incident after a hue and cry was raised. The other two admittedly are the two brothers and P.W. 1 is himself injured and P.W. 2 is a school-going boy whose testimony apart from being interested has been rejected by the learned Sessions Judge for good reasons like that he claims to have gone to the school after the incident when one of the brothers after receiving injuries was unconscious and admitted into the hospital and in this context the learned Sessions Judge felt that the prosecution witnesses have also not explained the injuries on the accused persons and therefore the possibility that the incident took place in the manner in which it was suggested by the defence i.e. the exercise of right of private defence could not be excluded. The learned Sessions Judge therefore acquitted the accused from the charge levelled against them.

15. The High Court on appeal set aside the conclusions arrived at by the learned Sessions Judge and convicted, the accused as mentioned above. The learned Judges of the High Court felt that the Sessions Judge was not right in drawing the inference about the 1st day i.e. 1st December incident that both the parties were in the fields which are just adjacent to each other still accused persons were not able to notice what according to the prosecution was done by the deceased (chopped off the ridge on his side) but the learned Judges did not consider the size of the fields, that there were no crops standing which could obstruct the vision or any other reason which might have resulted in the

obstruction of the view whereas it appears from the evidence of P.Ws 3 that even the fields of others in the neighbourhood are so nearby that they could hear the hue and cry of the trouble when it took place on 2nd December. It is also significant that the two parties are close relatives, sister of P.W. 1 and 2 is married to the accused appellant No. 1. It is also not the case of either party that there was bad blood between the parties. In this context if something happened on 1st December for that an attack as suggested by the prosecution does not appear to be reasonably probable whereas in the context of the circumstances indicated above what appears to be more probable is what the learned Sessions Judge thought to be the situation that when the deceased was doing something with the ridge that on the spur of moment there was hot exchange and in that the trouble arose.

16. It is clear from the evidence of P.Ws 3 and 4 that they did not see the incident as to how it began. Both claimed to have reached the scene after the trouble had started and the blade of the spade had fallen down as none of these two witnesses even noticed the falling of the blade. It is significant that although P.W.3 was produced as an independent witness but he also is found to be a relation of P.W. 1. It is also clear from the evidence of these two witnesses that they do not talk about any injury to the accused person. P.W. 1 also in his deposition do not speak about the injury to accused persons whereas in his earliest version Exh. P.1 he had mentioned the injury caused to accused-appellant No. 1 and in the earliest version he has not even mentioned about the two other eye-witnesses P.Ws 3 and 4. It is therefore apparent that an attempt is made even by P.W. 1 to suppress the fact of injury to accused appellant No. 1. The other witnesses have chosen not to speek about the injury to the accused-appellant and in view of these circumstances it appears that the inference drawn by the Sessions Judge was correct but the learned Judges of the High Court set aside the conclusions arrived at by the Sessions Judge without noticing these circumstances. It is also clear that the learned Sessions Judge before whom the evidence was recorded his conclusion on appreciation of evidence deserves due weight. In view of this situation, in our opinion, the High Court was not right in interfering in this appeal against acquittal. Even if on the oasis of material as it stands, the right of private defence of the accused appellant is not established still the material produced in cross examination and circumstances discussed above do indicate that the incident might have happened in a manner in which it was suggested by the accused appellant and in this view of the matter it could not be said that the prosecution has been able to establish the offence against the appellant beyond reasonable doubt. In this view of the matter the appeal is allowed, the conviction and sentence recorded by the High Court are set aside. The appellant is acquitted of the charges levelled against him. The appellant will be set at liberty forthwith.