Supreme Court of India
Veeramuthu vs State Of Madras on 24 February, 1971
Equivalent citations: (1971) 3 SCC 427, 1971 III UJ 430 SC
Author: C Vaidialingam
Bench: A Ray, C Vaidialingam
JUDGMENT C.A. Vaidialingam, J.

1. This appeal by special leave, is directed against the judgment dated February 19, 1970 of the Madras High Court in Criminal Appeal No. 346 of 1969, confirming the conviction of the appellant, who was the 1st accused, for an offence Under Section 302. Indian Penal Code, as well as the sentence of death passed by the Sessions Judge.

2. The appellant, alongwith three others, was charged Under Section 120B read with Section 302 of the Indian Penal Code for having entered into a criminal conspiracy about a few days prior to October 12, 1968 to commit the murder of one Vemban and that in pursuance of this conspiracy, the appellant committed the murder of Vemban. The appellant was further charged with having committed the murder of Vemban on October 12, 1968 at about 11.30 a.m. on the Pallapatti Pudupatti footpath shown in the sketch Ex.P. 16.

3. All the accused pleaded not guilty to the charge. So far as accused Nos. 2 to 4 are concerned, the learned Sessions Judge has held that the charge of conspiracy has not been made out by the prosecution and as such has acquitted them of the offence with which they were charged Under Section 120B read with Section 302 of the Indian Penal Code. So far as the appellant is concerned, the learned Sessions Judge has found him guilty of the offence of causing the death of Vemban and has sentenced him to death. The High Court on appeal has confirmed the conviction and sentence.

4. The case of the prosecution was as follows. The appellant belonged to the village of Pudupatti. A few months before the occurrence, the daughter-in law of the appellant had come to the village and was staying in the house of his elder brother. There was a quarrel between the appellant and his daughter-in law in the course of which the appellant threw his shoes at his daughter-in-law which missed her but struck the deceased, who was present along with some other villagers at that time. The deceased abused the appellant for throwing the chappals on him. This incident seems to have embittered the relations between the appellant and the deceased.

5. On October 12, 1968, the deceased was going in a cycle along the footpath shown in Ex.P. 16 from his village pudupatti to Dindigul via Pallapatti. The appellant was standing on the road-side near Pallapatti with an arival. The presence of the appellant was noticed by P.W.s 3 and 4. On seeing the deceased coming on his cycle, the appellant attacked him with the arival and caused injuries on his two hands. On receiving these blows, Vemban is stated to have failed down from his cycle when the appellant gave another blow with the arival on his chest. Vemban is stated to have got up. He ran hither and thither for a short while and ultimately fell down dead. P.W. 3 is stated to have mentioned about this occurrence to P.W. 2, the son of the deceased who was grazing cattle in a nearby field. P.W. 3 immediately rushed up to his village Pudupatti and informed his fathers's brother P.W. 1 about the occurrence. P.W. 1 came to the place where the body of his brother was

lying, and later on went to Dindigul about three miles from the scene of occurrence and gave the complaint Ex.P. 1 to the village Munsif P.W. 5 about the crime committed by the appellant. That information was recorded by P.W. 5 at about 1.30 p.m. P.W. 5 came along with P.W. 1 to the scene of occurrence and after seeing the dead body, gave information to the Police at about 3 30 p.m.

6. Investigation was started by the Police and the body was sent for post mortem examination. The doctor P.W. 12 has, in the post mortem certificate, enumerated the three injuries found on the body of the deceased.

In particular, injury No: 3 is described as.

A gaping incised wound 10 cms. x 3 cms. penetrating into the chest cavity and the right collar bone is out completely and obliquely near its medical end and this wound extends from the medical end of the left collar bone to a point 6 cms. above the right nipple.

7. On opening the chest cavity, the muscles close to wound No. 3 are infiltrated with dark blood The 2nd and 3rd ribs are cut completely and is in line with the cut in the collar bone.

It is the view of the doctor that injury No. 3 described above is necessarily fatal and that all the injuries found on the body of the deceased could have been caused by an arival. The doctor has also stated that it was possible for the deceased after sustaining the injuries found on the body, to have run far a distance of about 300" to 400" before collapsing.

8. The main evidence relied on by the prosecution for proving the attack by the appellant on the deceased was that of P.Ws. 3 and 4. according to P.W. 3, she was returning from Pallapatti to Padupatt.i after having got down earlier from a bus at Dindigul; Padupatti was her village. On the way, she saw P.W. 4 coming in the opposite direction from podupatti to Pallapatti Both of them stood by the road-side and were having a little conversation. It is her evidence that both of them saw the appellant standing on the road-side with an arival in his hand. She has also referred to the fact that the second accused was nearby and that accused Nos. 3 and 4 were sitting a little further away. She was further deposed that a little latter Vemban, the deceased, came in his cycle from Pddupatti and was proceeding towards Pallapatti. As he found that she and P.W. 4 were having a conversation on the middle of the road, the deceased rang the bell of his cycle, on hearing of which they moved to the side of the road. At that time, the appellant with his arival proceeded towards Vemban and gave him a blow in the first instance on his right hand. As Vemban attempted to ward off the blow, a second cut was again given on his left hand on receipt of which, he fell down from his cycle. Then a third blow on the chest was inflicted by the appellant. It is her evidence again that Vemban got up and ran hither and thither and ultimately fell down dead.

9. P.W. 3 has further stated that on seeing this occurance, she went and informed P.W. 2, the son of the deceased, who was grazing cattle nearby alongwith certain others. P.W. 2 has stated that he went to hts village and informed his uncle P.W. 1, who gave the complaint Ex. 1 to the village headman P.W. 5. P.W. 4 also has substantially given the same version as P.W. 3.

10. The plea of the appellant was that there was a property dispute between his father and one Thathan Servai of his village about 20 years ago. In connection with that dispute, thathan Servai murdered the appellant father. At that time the appellant has filed a criminal complaint against thathan servai for committing the murder of his father, but the criminal Court even at the committal stage discharged Thathan Servai. Ever since that incident there has been a very bitter enmity between the appellant and Thathan Servai and the latter has been doing his utmost to create trouble to the appellant. P.W. 1 Perumal, brother of the deceased, who gave the complaint Ex.P. 1, regarding the present incident, is a very close friend and also related to Thathan Servai. Thathan Servai was having a brick-kiln and P.W. 1 used to buy bricks from him. P.Ws. 3 and 4 are working in Thathan Servai's brick-kiln and they are under his control. Thathan Servai and P.W. 1 have conspired to foist this criminal case against the appellant making use of the services of P.Ws. 3 and 4 to give false evidence against him, Therefore the plea of the accused was that the case has been engineered against him by Thathan Servai and P.W. 1 and that the evidence of P.Ws. 3 and 4 is false.

11. Both the learned Sessions Judge and the High Court have rejected the plea of the appellant that the case has been engineered by Thathan Servai and P.W. 1 and the view of the Courts is that the incident spoken to by the appellant involving Thathan Servai has taken place a long time ago and that there was no material on record to show that Thathan Servai has taken any interest regarding the present incident. It has also been held that P.Ws. 3 and 4 were not giving any false evidence at the instance of Thathan Servai nor has P.W. 1 been instigated to give any false complaint against the appellant. In this view both the learned Sessions Judge and the High Court accepted as true the evidence given by P.Ws. 3 and 4 regarding the occurrence. The plea of the appellant set out above, was totally rejected As the Courts found no extenuating circumstance in favour of the appellant, after convicting him for the offence of murder, the death sentence was also considered to be proper.

12. Mr. Lakshminarasu, learned Counsel for the appellant, has very strenuously urged that there are very serious discrepancies in the version given in Ex.P. 2 by P.W. 1 and the version spoken to before the Court by P.Ws. 3 and 4. The Counsel also pointed out that the Magistrate, P.W. 11, who conducted the identification parade of the accused has given evidence to the effect that P.Ws. 3 and 4 identified only accused Nos. 3 and 4, According to the Counsel, this evidence shows that the eye witnesses P.Ws. 3 and 4 have not been able to identify the appellant who was the first accused. Therefore the evidence of P.Ws. 3 and 4 about the appellant being the assailant is false. The Counsel also pointed out that in Ex.P. 1, it has been mentioned that the deceased, prior to the attack, was obstructed not only by the appellant but also by the other three accused. That version does not find a place in the evidence given before the Court by either P.W. 3 and or P.W. 4. The learned Counsel also relied upon a minor circumstance regarding the direction in which the deceased was proceeding and urged there is a discrepancy between the evidence of P.W. 2 and the eye witnesses P.Ws. 3 and he further pointed out that P.Ws. 3 and 4 being in the employ of Thathan Servai enemy of the appellant, were giving false evidence.

13. Mr. Rangam, learned Counsel appearing for the State has drawn our attention to the fact that P.W. 3 has categorically stated before the Court that she identified all the accused including the appellant and that there has been no cross-examination on that point. It is also pointed out that P.W. 4, who belongs to the same village as the accused, has stated that who knows the accused and

that there is again no effective cross-examination on this. He also pointed out that the names of P.Ws. 3 and 4 find a place in Ex.P. 1 and the accused has not been able to satisfy the Court that these two witnesses are in any manner interested in falsely implicating him. We have considered the contentions of Mr. Lakshminarasu and we do not see any merit in them. All the points referred to by him have been considered by the High Court and rejected.

14. No doubt, Mr. Lakshminarasu drew our attention to an answer given by P.W. 4 that she identified in the identification parade accused Nos. 3 and 4. According to the Counsel, this means that the witness has not identified the appellant in particular and, therefore, she could not have known the appellant at the time when the crime was committed.

15. We are not inclined to agree with the contention of Mr. Lakshminarasu that neither P.W. 3 nor P.W. 4 identified the appellant at the identification parade. No doubt, there is an answer given by the Magistrate P.W. 11 that the third and the forth accused were identified by P.Ws. 3 and 4. We do not find any statement in his evidence that they were asked to identify the appellant in particular & that they failed to do so. Therefore, the evidence of P.W. 11 is of no assistance to the appellant. Both P.Ws. 3 and 4 have given evidence about their knowing the appellant and that evidence has been accepted.

16. So far as the complaint Ex. P1 is concerned, there is no doubt, a reference to an obstruction stated to have been caused not only by the appellant but also the accused Nos. 2 to 4. But it must be pointed out that no overt act, so far as the actual crime is concerned, has been attributed by P.W. 1 in Ex.P. 1 to accused Nos. 2 to 4. In this connection, it should be remembered that P.W. 1 does not claim to be an eye-witness. On the other hand, his information regarding the occurrence was based upon the particulars furnished to him by his nephew P.W. 2 who has young boy of about 14 years. Again, neither P.W. 3 nor P.W 4 involve any of the accused Nos. 2 to 4 in the participation of the attack against the deceased. Therefore, the mere circumstance that there is a reference in Ex.P. 1 to an obstruct on stated to have been caused to the deceased by the other accused is of no consequence, so far as the appreciation of the direct evidence furnished by P.Ws. 3 and 4 as eye witnesses have been given in Ex.P. 1. The plea of the accused regarding P.Ws. 3 and 4 being employees of Thathan Servai and as such interested in giving false evidence has been rejected. The direction in which the deceased was going has been clearly given by P.Ws. 3 and 4. We are of the view that their evidence has been properly accepted by the High Court.

17. The Counsel finally urged that in view of the nature of the attack, it cannot be stated that the appellant intended to inflict such injuries which in the ordinary course of nature were sufficient to cause death. That is, according to the Counsel, the appellant is not guilty of the offence of murder. This contention cannot be accepted. We have already referred to the injuries described in the post-mortem certificate as well as the opinion of the doctor. The medical evidence clearly shows that injury No. 3 was sufficient in the ordinary course of nature to course death and that was the fatal injury.

18. In the result the conviction of the appellant for the offence of murder and the sentence passed against him for the said offence are both confirmed, and this appeal is dismissed.