Supreme Court of India
Amrithalinga Nadar vs State Of Tamil Nadu on 10 October, 1975
Equivalent citations: AIR 1976 SC 1133, 1976 CriLJ 848, (1976) 2 SCC 194
Author: P Bhagwati
Bench: P Bhagwati, R Sarkaria
JUDGMENT P.N. Bhagwati, J.

1. The appellant and four other accused were tried by the Sessions Judge, Tirunelveli on various offences on the allegation that they formed an unlawful assembly with the common object of causing the death of Sudalaikannu Nadar (hereinafter referred as the deceased) and in pursuance of this common object, the appellant committed the murder of the deceased by inflicting a blow with a short spear M.O. 1, commonly used for killing rats. The learned Sessions Judge acquitted the appellant as well as the four accused, but, on appeal by the State, their acquittal was reversed and the appellant was convicted for the offence under Section 302 and sentenced to suffer imprisonment for life, while, out of the other four accused, accused No. 2 was convicted of the offence under Section 147 and sentenced to pay a fine of Rs. 100/-, or in default of payment of fine, to suffer simple imprisonment for one month and accused Nos. 3 to 5 were convicted of the offence under Section 148 and each of them were sentenced to pay a fine of Rs. 150/- or in default to suffer simple imprisonment for six weeks. Since the acquittal of the appellant was reversed and he was convicted and sentenced to suffer imprisonment for life, he was entitled to prefer an appeal to this Court under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and he accordingly preferred the present appeal to this Court.

2. The incident out of which the present appeal arises took place on 18th September, 1969 in a village Alagiavilai. There was a festival in this village during a period of two or three days immediately prior to the date of the incident in the temple of Muthumariamman and for celebrating this festival a subscription of Rs. 35/- per family was collected from the residents of the village. It appears that PW3, a younger brother of the deceased, was unable to pay the amount of the subscription due from him and he, therefore, pledged a brass vessel in favour of the organisers of the festival. The festival was celebrated by arranging various performances and amongst those who were called for giving the performances were one piper and one troupe called Villupattu troupe. The festival being over, some of the organisers gathered together under a tamarind tree at about 3.30 p.m. on 18th September, 1969 for the purpose of disbursing monies to the various performing artistes and finalising the accounts. Those present included the appellant and the four accused, one Pauldurai, one Swarnalingam, one Sivalinga Nadar, P.W. 3 and P.W. 8. The piper was paid Rs. 5/- more than the stipulated charge while the Villupattu troupe was paid Rs. 5/- less than what was agreed with them. P.W. 3 protested against this iniquitous differentiation and insisted that Villupattu troupe should be paid the stipulated charge. The second accused at once taunted PW 3 by saying: "You are a man who has no means to pay the subscription. What right have you to enter a protest?" This remark angered PW 3 and he beat the second accused. The second accused, Pauldurai and Swarnalingam retaliated by beating PW 3, on which PW 3 raised an alarm. The deceased was at that time taking food in his house which was on the eastern side of the pathway leading to the house of PW 1 and on hearing the alarm of his brother, PW 3, he rushed to his rescue with a knife M.O. 3 in his hand. Pauldurai and Swarnalingam caught hold of the deceased, but the deceased gave knife

blows and both Pauldurai and Swarnalingam sustained injuries on their hands. So far there was no dispute between the prosecution and the defence and both parties accepted that this is in fact what happened. But from this point onwards there was divergence between them.

3. Now, accused Nos. 2 to 4 are brothers, the appellant, Pauldurai and Swarnalingam are sons of the brothers of accused Nos. 2 to 4, while the 5th accused is the son of the sister of accused Nos. 2 to 4. The prosecution case was that on account of the beating given by PW 3 to the second accused and the injuries inflicted on Pauldurai and Swarnalingam by the deceased, the appellant and the four accused, who were all related to one another as also Pauldurai and Swarnalingam who were obviously angered and excited, chased the deceased and PW 3, who attempted to run away from the scene of the offence on seeing that they were outnumbered by the appellant and the other four accused. The deceased and PW 3 ran in the southern direction along with the pathway leading to the house of PW 1 in their attempt to escape from the wrath of the appellant and the other four accused who were closely following on their heels. The deceased and PW 3 ran past their houses and on hearing noise, PW 4, the wife of the deceased and PW 5 his foster daughter, came out and saw that the deceased and PW 3 were being chased by the appellant and the four other accused and they also ran behind the chasers. The deceased and PW 3 entered into the compound of the house of PW 1 and sought refuge in that house by bolting the room of that house from inside. PW 1 and his wife PW 2 were sitting in the front courtyard at this time and when the appellant and the other four accused came into the compound in pursuit of the deceased and PW 3, PW 1 entreated them to spare the deceased and PW 3. The appellant and the other four accused, however, did not pay any heed to the entreaties of PW 1 and said that the deceased had stabbed Pauldurai and Swarnalingam and that they would not, therefore, leave the house without "finishing him off." The appellant and the other four accused started pelting stones at the thatched roof of the house and the second accused battered the door with a stick in his hand with a view to breaking it open. The door was ultimately forced open as the iron hook MO 2 fixed with the door became loose and came off and on entering into the room, the appellant, who was carrying a short spear MO 1 used for killing rats, inflicted a blow on the left side of the neck of the deceased with the spear MO 1. The deceased immediately fell down and died almost instantaneously, and as soon as he fell down, the appellant and the four other accused ran away with their weapons in the northern direction. This was witnessed by PW 4 and PW 5 who had arrived at the scene of the offence in the meantime.

4. PW 1 then set out to go to Poochikadu village which is about three miles from Alagiavilai for the purpose of giving information of the commission of the offence to the village Munsif PW 9 who was residing there. He gave a statement Ex, P-1 which was recorded by PW 9 at his residence at 8 p.m. PW 9 despatched the statement Ex. P-1 with his report to the Police Station at Kulasekarapattinam and it was received by the Station Writer PW 14 at 11 p.m. on the same day and a criminal case was registered by him. The Sub-Inspector of Police PW 15 thereafter investigated the offence and recorded the statements of witnesses. The post-mortem examination was conducted by PW 6 and it was found that the injury received by the deceased on the left side of the neck one inch in the middle of the clavical was a serious injury sufficient in the ordinary course of nature to cause death. The appellant was arrested by the Inspector of Police PW 16 at 9.30 p.m. on 24th September, 1969 at the bus stand and then and there at the time of his arrest the appellant made a confessional statement and gave information that he had buried the spear in the sand under an Udai tree at the distance of

a hundred yards at the southern side of the house of PW 1. The appellant then took the Inspector of Police PW 16 to the spot indicated by him and on digging the earth at that spot the spear MO 1 was recovered. The investigation was thereafter completed and a charge-sheet was filed against the appellant and the four other accused charging them with various offences under the Indian Penal Code.

5. The learned Sessions Judge took the view that there were serious infirmities in the prosecution case against the appellant and the other four accused and he accordingly acquitted them. But on appeal by the State, the High Court disagreed with the view taken by the learned Sessions Judge and inter alia convicted the appellant of the offence under Section 302 of the Indian Penal Code for committing the murder of the deceased with the spear MO 1. The other four accused were also convicted by the High Court of offences under Sections 147 and 148, but we need not refer to them since their conviction does not form the subject-matter of the present appeal. The only question which arises for consideration in this appeal is whether the High Court was right in reversing the acquittal of the appellant and convicting him of the offence under Section 302.

6. We have been taken through the evidence of P.W. 1, PW 2, PW 3, PW 4 and PW 5, who are claimed to be the eye-witnesses to the commission of the offence and we have also had the judgments of the High Court and the Court of Session read to us. We think that on a proper appraisal of the evidence of these witnesses, read in the light of the other evidence on record and the circumstances of the case, the view taken by the High Court is clearly to be preferred. It is now settled law that the powers of the High Court in an appeal against acquittal are not different from those in an appeal against conviction. The High Court in dealing with the appeal against acquittal can go into all questions of fact and law and reach its own conclusions provided it pays due regard to the fact that the matter had been before the Court of Session and the Sessions Judge had the chance and opportunity to see the witnesses give evidence and watch their demeanour. Further, the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions Judge for disbelieving a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a position of innocence when he is put up for trial and his acquittal in no sense weakens that presumption and this presumption must also receive adequate consideration from the High Court.

7. We have carefully examined the judgment of the High Court and find that the High Court has borne all these principles in mind and scrupulously followed them. The High Court has considered the matter in a closely reasoned judgment in which it has taken into account every single reason given by the Sessions Judge in reaching the conclusion that it was the appellant who inflicted injury on the left side of the neck of the deceased resulting in his death.

8. We may point out that it is a little doubtful whether PW 1 and PW 2 actually saw the appellant inflicting injury on the left side of the neck of the deceased. PW 1 admitted in cross-examination that he asked PW 3 as to who had stabbed his brother and, though PW 3 insisted in his evidence that PW 1 had never asked him as to who had stabbed the deceased and he never told him that the appellant had stab bed the deceased, he was contradicted by reference to his statement in the committal court

where he had stated that PW 1 had asked him as to who had stabbed his brother and he replied that the appellant had stabbed him. If in fact P.W. 1 had witnessed the actual stabbing of the deceased by the appellant, it is difficult to understand why he should have asked PW 3 as to who had stabbed the deceased and why PW 3 should have had to inform PW 1 that the appellant had stabbed the deceased. It is, therefore, quite probable that PW 1 and equally with him, PW 2 did not actually witness the incident of the stabbing of the deceased by the appellant. They were presumably sitting in the courtyard in front of the room and the incident took place inside, though, even in regard to their presence in the courtyard, we must confess that we are a little sceptical. If we look at the report of the incident lodged by PW 1 with the village Munsif PW 9, we find many facts stated there which could not possibly be within the knowledge of PW 1. In fact, PW 1 in his cross-examination stated that when he and his wife returned from their garden to their house a little while before the incident, he saw four or five persons sitting under the tamarind tree, but he did not notice who they were, nor could he say to which place they belonged or for what purpose they were assembled there. But even so, the report lodged by PW 1 with the village Munsif PW 9 contained a statement by him that in the evening of that day, Swarnlingam and others were sitting under the tamarind tree settling the festival accounts. The possibility cannot be ruled out that PW 1 and PW 2 were not present in the house when the appellant and the other four accused chased the deceased and PW 3 into the house and it was after confabulation with PW 3 that PW 1 lodged the report of the incident with the village Munsif PW 9. We would not, therefore, rely implicitly on the evidence of PW 1 and PW 2.

9. But the evidence of PW 3, who was with the deceased at the time of the murderous assault, stands on a different footing. That evidence was accepted by the High Court and, save on two points which we shall presently discuss, we do not think of any reason to interfere with the appreciation of his evidence by the High Court. Firstly, PW 3 stated in evidence that the scuffle between the deceased on the one hand and Pauldurai and Swarnlingam on the other in which the deceased caused knife injuries to Pauldurai and Swarnlingam, took place "near the tamarind tree itself." But on this point he was contradicted by reference to his statement in the committal court where he had stated that on being beaten by the second accused, Pauldurai and Swarnlingam, he ran towards his house which was on the east of the pathway leading to the house of PW 1 and when he was at a distance of about 40 cubits from his house, the deceased coming from the opposite direction joined him and a scuffle then took place between the deceased on the one hand and Pauldurai and Swarnlingam on the other and this spot where the scuffle took place was at a distance of 120 cubits from the house of PW 1. PW 3 also admitted in cross-examination that when he received beating from the second accused, Pauldurai and Swarnlingam, he ran a distance of about four or five feet when the deceased, who came running from his house, met him. There can, therefore, be no doubt that the scuffle between the deceased on the one hand and Pauldurai and Swarnlingam on the other did not take place under the tamarind tree but it took place at some point between the tamarind tree and the house of the deceased. Now the distance between the ' houses of the deceased and PW 1 was about 50 yards and, therefore, the distance between the spot where the scuffle took place and the house of PW 1 could not be more than about 60 yards. That would, indeed, be a very short distance which can be covered in less than one minute by a person running at a reasonable speed. There must, therefore, hardly have been any appreciable interval of time - not more than a minute - between the scuffle and the deceased and PW 3 reaching the house of PW 1.

10. Secondly, P.W. 3 stated in his evidence that when the deceased and P.W. 3 took shelter in the room of the house of P.W. 1, they bolted the door from inside and the second accused battered it with a stick and broke it open and the appellant and the other four accused then entered the room and the appellant gave a blow on the left side of the neck of the deceased with the spear M.O. 1. This part of the story narrated by P.W. 3 is also a little difficult to believe. There was no evidence on behalf of the prosecution showing any marks or dents on the door by reason of battering of the door by the second accused. It is possible that when the deceased and P.W. 3 sought refuge in the room, they must have tried to bolt the door from inside, but not much force could have been needed to force open the door, since this was more a hutment than a house. It must, therefore, hardly have taken any time for the appellant and other four accused to push open the door and enter the room. There is little doubt that when the other four accused forced entry into the room, the appellant inflicted an injury on the left side of the neck of the deceased, but it is not possible to accept the prosecution case that this injury was caused by the appellant with the spear M.O. 1. The circumstances in which the spear M.O. 1 came to be recovered by the investigating officer are quite interesting. Though the incident took place on 18-9-69, the police could not trace the appellant and it was only on 24-9-69 at 9.30 p.m. that the Inspector of Police PW 16 could arrest him and that was at a bus stand in a place called Naduvakurichi. Strangely enough, the appellant there and then made a confessional statement and gave information leading to the recovery of the spear M.O. 1. It is incredible that the appellant should have suddenly become repentant as soon as he was arrested and should have immediately, without anything more, offered to discover the spear M.O. 1 with which he caused injury to the deceased. It is also difficult to accept that after inflicting the injury on the deceased, the appellant should have hidden the spear only at a distance of 100 yards in the rear of the house of P.W. 1. The evidence of P.W. 3 was that as soon as the deceased fell on the ground as a result of the injury caused to him, the appellant and the other four accused ran in the northern direction, i.e. away from the rear of the house of P.W. 1 and if that be so, it passes one's comprehension as to why the appellant should have returned for the purpose of hiding the spear in the rear of the house of P.W. 1. There must have been hundreds of places far removed from the scene of crime where the appellant could have hidden the spear and it is difficult to understand as to why of all places, the appellant should have chosen a spot only a short distance from the house of P.W. 1. It may also be noted that according to the evidence of P.W. 1 the Sub-Inspector of Police had the spear "after 5 days of occurrence", i.e. on 23-9-1969 but the spear M.O. 1 was not recovered until the night of 24-9-69. It would, therefore, seem that the spear M.O. 1 alleged to have been recovered by the police from the rear of the compound of the house of P.W. 1 was not the spear used by the appellant in causing injury to the deceased and hidden by him after the incident. The appellant undoubtedly caused injury to the deceased but it is not possible - to say what was the precise weapon used by him for that purpose. All that can be said is that the injury must have been caused by a sharp-edged weapon. There can, therefore, be no doubt that the appellant caused injury on the left side of the neck of the deceased by means of a sharp-edged weapon and this injury resulted in the death of the deceased. But the question is: what offence was committed by the appellant on these facts? The High Court found that the offence committed by the appellant was that under Section 302 of the Indian Penal Code. But we do not think that the High Court was right in taking this view. The genesis or starting point of the incident was the scuffle which took place in the first instance between PW 3 on the one hand and the second accused Pauldurai and Swarnalingam on the other, and later, between the deceased on the one hand and Pauldurai and Swarnalingam on the other. It

was because P.W. 3 gave beating to the second accused and the deceased inflicted knife injuries on Pauldurai and Swarnalingam that the appellant and the four other accused chased the deceased and P.W. 3 and the appellant caused the fatal injury to the deceased. It will, therefore, be seen that the incident starting with the beating of the second accused by PW 3 and culminating in the giving of the fatal blow to the deceased by the appellant was one single continuous incident without any break and that is also what was stated by PW 3 in his cross-examination. The chase of the deceased and P.W. 3 by the appellant and four other accused could not, for reasons which we have given above, have taken more than a minute or so and, there was, therefore, hardly any appreciable interval of time between the scuffle and the giving of the fatal blow by the appellant. The later part of the incident followed upon the earlier as its sequel and there was no time for reason to interpose and passions to cool down. It is apparent that the fatal injury was caused by the appellant to the deceased without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. It is not possible to say that the appellant took any undue advantage or acted in a cruel or unusual manner in chasing the deceased and inflicting the fatal injury on him. The deceased was armed with the knife M.O. 3 which he had freely and unhesitatingly used for the purpose of causing injuries to Pauldurai and Swarnalingam and there is little doubt that he carried that knife with him when he ran for a shelter in the house of P.W. 1. It is no doubt true that the knife M.O. 3 was purported to be recovered by the police at 10.15 a.m. on the next day after the incident from under the tamarind tree, but this recovery is highly suspicious because the Village Munsif P.W. 9 admitted in his cross-examination that when he inspected the spot at about 5 a.m. in the morning, he did not see the knife M.O. 3 or its leather sheath M.O. 8 lying there and it was only at about 10 a.m. that he found these two items at that spot. It does appear that the knife, M.O. 3 and the leather sheath, M.O. 8 were not left by the deceased near the tamarind tree when he ran for safety. In fact, as pointed out above, the scuffle between the deceased on one hand and Pauldurai and Swarnalingam on the other took place at some spot between the house of the deceased and the tamarind tree and, therefore, even if the deceased had left the knife M.O. 3 and leather sheath M.O. 8 behind, they could not have been found lying underneath or to the west of the Tamarind tree. It would, therefore, be safe to conclude that the deceased carried the knife M.O. 3 with him when he ran to take shelter in the house of P.W. 1. This knife was clearly a formidable weapon as it was about 9" in length and in the circumstances, it cannot be said that in chasing the deceased and inflicting the fatal injury on him when he was armed with such a knife, the appellant took undue advantage or acted in a cruel or unusual manner. The case of the appellant, therefore, comes clearly within the fourth exception in Section 300, I.P.C. and in the circumstances, the appellant can be held guilty only of the offence under Section 304, Part I of the Indian Penal Code.

11. We, accordingly, convert the conviction of the appellant from one under Section 302, I.P.C. to that under Section 304, Part I, I.P.C. So far as concerns the sentence to be imposed on the appellant for this offence, it may be pointed out that the appellant has already been in Jail for more than five years and hence we think it would meet the ends of justice if we reduce the sentence to that already undergone by him.