Supreme Court of India
Karuppanna Thevar And Ors. vs The State Of Tamil Nadu on 19 August, 1975
Equivalent citations: AIR 1976 SC 980, 1976 CriLJ 708, (1976) 1 SCC 31
Author: Y Chandrachud
Bench: P Bhagwati, R Sarkaria, Y Chandrachud
JUDGMENT Y.V. Chandrachud, J.

1. The appellants were tried by the learned Sessions Judge Ramanathpuram, at Madurai, under Section 302 read with Section 34 of the Penal Code on the charge that on February 7, 1969 they committed the murder of one Andar Chettiar in furtherance of their common intention. The learned Judge by his judgment of December 2, 1969 acquitted the appellants on the view that the prosecution had failed to prove the charge beyond a reasonable doubt. In appeal the High Court of Madras set aside the order of acquittal, convicted the appellants and sentenced them to imprisonment for life under Section 302 read with Section 34. This appeal by special leave is directed against that judgment.

2. The village of Pannaiyur where Andar Chettiar was murdered is ridden by factions. The Chatters and Thevars have been fighting civil and criminal litigations for several years concerning rights regarding the Arianatchiamman temple. The case of the prosecution is that the appellants, who are Thevars, were aggrieved that the deceased Andar Chettiar used to help the Chatters in their litigations against the Thevars and therefore the appellants committed the murder of Andar Chettiar at about 1' a.m. on February 7, 1969.

3. Late on the night of February 6, 1969 the deceased went to his field for watching the crop along with Alagiri Chettiar who is an important witness in the case. They went round their fields and then sat near the well of one Ramaswami Chettiar. It was then past midnight. It is alleged that the appellants rushed to the spot and killed Andar Chettiar. Appellants 1 and 3 are alleged to have been armed with spears, Appellant 2 with a sickle and Appellant 4 with a stick.

4. Alagiri Chettiar, being in the company of the deceased, had a close view of the incident and he ran a distance of about a furlong and a half to break the news to Ramiah Chettiar and Venkatraman Chettiar. All the three of them then went to the scene of occurrence where they found Andar Chettiar lying dead, with his left hand severed at the wrist joint.

5. On hearing the cries of Alagiri Chettiar, the village watchman went to the scene of offence and saw the dead body. He went back to the village and brought the village Munsif to the scene of occurrence. It is alleged that immediately thereafter Alagiri Chettiar lodged the First Information Report (Ex. P/1) with the village Munsif.

6. Admittedly, there was a fair amount of moonlight at the time of occurrence. Two adjoining field-owners. Mahalingam Chettiar and Veerabadran Chettiar, who had gone to their fields for watching the crop are alleged to have seen the appellants near the scene of occurrence roundabout the time of the offence.

7. The village Munsif prepared reports in the printed form and despatched them to the police and the Magistrate. The Sub-Inspector of Police, Tiruchuli, went to the scene of offence along with an Inspector of Police. The inquest was held on the morning of the 7th and the autopsy was performed later the same day. The evidence of Dr. Malayappan shows that the deceased had received 9 incised injuries and 3 lacerated injuries on vital parts of his body. The left hand was cut near the wrist.

8. The appellants were arrested on February 11, 1969. The weapons of offence are alleged to have been discovered in pursuance of statements made by them. It is further alleged that blood-stained clothes were seized at their instance. The report (Ex. P/19) of the Serologist shows that there was human blood on some of the weapons and clothes so discovered.

9. The High Court was dealing with an appeal against an order of acquittal passed by the Sessions Court. It has in its judgment refer red to a large number of decisions of this Court which have taken the view that though the powers of the High Court in an appeal against acquittal are as wide as its powers in an appeal against an order of conviction, where two views of the evidence are reasonably possible the High Court should not substitute its own view for that of the trial Court. In chronological order, the last of the cases referred to by the High Court is Khedu Mohton v. State of Bihar in which it was said that the fact that the High Court is inclined to take a different view of the evidence is not a sufficient justification for interfering with the order of acquittal. The same view has been taken by this Court in a series of cases decided recently. See State of U.P. v. Hari Prasad .

10. After setting out these well-established principles which govern appeals against acquittals, the High Court proceeded to assess the evidence, "keeping the principles of law in mind". We regret to say, meaning no disrespect, that this case is just one more instance where the principles are set out correctly but are applied wrongly. It is important to know the fundamental principles of law for unless the court knows them it will not be able to apply them consciously. But experience unfortunately shows that to know principles is not always to apply them correctly and often the duty begins and ends with a formal re-statement of legal principles. It is as though an enumeration of the widely accepted principles will smother the criticism that those principles have been ignored in the decision of the case.

The principal eye-witness is Alagiri Chettiar (P.W. 1) who had accompanied the deceased for taking a round of their fields on the night of February 6, 1969. It is quite likely that the witness accompanied the deceased but that is not enough by itself for accepting his claim that he saw the incident and identified the assailants of Andar Chettiar. Alagiri Chettiar and Andar Chettiar had admittedly gone to their fields for watching the crop which was ready for harvesting. It is unlikely that rather than be in his own field, which is about 150 yards away from the scene of offence, Alagiri would be near about the well where the incident took place and which is a short distance away from the field of the deceased. Mahalingam Chettiar (PW 3) and Veerabadran Chettiar (PW 4) are adjoining cultivators and their evidence shows that the normal custom was that each owner would sleep in or near about his field in order to be able to watch the crops effectively. Mahalingam and Veerabadran went round their fields and slept on the common ridge of their fields. There is thus something unnatural in the very claim of Alagiri Chettiar that he was near about the field of the deceased at the time of the occurrence.

11. According to Alagiri Chettiar he and the deceased took their food on the 6th evening and thereafter they went to their fields at about the time when one normally goes to sleep. They took a round of their respective fields and the case of Alagiri Chettiar is that he and the deceased kept talking behind a thatti near a well adjoining the field of the deceased. This claim is also highly unnatural. The offence took place at about 1 a. m. on the 7th and it is highly improbable that at that hour Alagiri and the deceased would be just chatting idly near the well. Villagers do chat idly but our attempt in this appeal is to find whether the view taken by the Sessions Court can be characterised as unreasonable or perverse. Unnatural events also do take place in life but when a series of unnatural incidents are alleged to have taken place in quick succession, the case acquires an air of unreality.

12. Alagiri Chettiar describes the attack on the deceased far too vividly and meticulously. He knows who stabbed on the back of the de ceased who on the stomach, who severed the left wrist and who beat on the head. He has ascribed an equal and equitable part to the four appellants. If the appellants appeared suddenly near the well and started assaulting the deceased, it is unlikely that Alagiri Chettiar would have continued to remain near the deceased to be able to obtain such a close view of the incident. There are cases where the claim of a witness that he was dangerously close to the victim at the time of the assault can be accepted. But each case has its own peculiar atmosphere; and the background in which the evidence of Alagiri Chettiar has to be assessed is the deep-rooted rivalry between the Chatters and Thevars. Alagiri is himself a Chettiar and it sounds incredible that the Thevar appellants should not even so much as threaten him.

13. The witness says that he raised a hue and cry immediately after the incident but it is surprising that no one from the vicinity met him near about the scene of occurrence. The fields were ripe for harvesting and the evidence shows that the cultivators had gone to their fields for protecting the crop. Alagiri covered a long distance shouting all through the way but even Ramiah Chettiar and Venkatraman Chettiar to whom he wanted to report the occurrence did not wake up on hearing his shouts. He had to stir and wake them up. We have no doubt that if Alagiri had seen the assault on the deceased and if he were to raise a shout, a fair number of the adjoining owners would have gathered at the spot.

14. It is alleged that the village watchman went to the scene of offence after hearing Alagiri's outcry. Somehow, the whole pattern of behavior of the prosecution witnesses smacks of artificiality. If the village watchman heard Alagiri's shouts in the village, it is surprising that he should proceed straightway to the well where the deceased was murdered, without so much as exchanging a word with Alagiri. The house of the village Munsif is just near the Mandai by which Alagiri passed on his way from the scene of offence to the village. Alagiri did not contact the Munsif. Nor indeed did any of the Nadars and Asaris who live near the Mandai wake up on hearing the shouts of Alagiri.

15. But this is not all. The cross-examination of Alagiri Chettiar presents a sorry picture of significant contradictions. He resiled from several statements which he had made in the committal court and before the police during the course of investigation. His previous statements are calculated to show his immense personal interest in the case and, evidently, he went back on those statements in order to establish his independence as a witness. He claimed in the Sessions Court

that he had seen the appellants near the Mandai some time before the occurrence but this telling circumstance was not mentioned by him to the village Munsif who recorded his complaint.

16. The most important aspect of Alagiri's evidence is that what he stated before the committal court almost completely destroys the evidence which he gave in the Sessions Court. He stated before the committal court that after seeing the dead body near the well, he, Venkatraman and Ramiah Chettiar went back to their respective houses in the village; that after the Inspector and the Sub-Inspector of Police arrived in the village on the morning of the 7th, he went back once again to the place of occurrence; that the day had dawned by then; that he went to the scene of offence because he saw the police officers going there and that it was thereafter that the village Munsif recorded the First Information Report (Ex. P/1). This statement was put to him but he said that he did not remember whether he had made any such statement. The case of the prosecution now is that the First Information Report was recorded immediately after the occurrence which, in the light of what Alagiri stated in the committing court is plainly untrue.

17. By reason of these circumstances, particularly the statement made by Alagiri in the committing court, the learned Sessions Judge came to the conclusion that the prosecution case was not free from reasonable doubt. In spite of the glaring contradictions and infirmities from which the evidence of Alagiri suffers, the High Court certified him as a "candid, natural and convincing" witness. The High Court also came to the conclusion which seems to us impossible to accept that the First Information Report has a "ring of truth" in it and that Alagiri was "a real eye-witness to the entire occurrence". As regards the statement made by Alagiri in the committing court, the High Court thought that it was great pity that the Assistant Public Prosecutor who was in charge of the prosecution in the committing court "did not bestir himself", that the committing Magistrate did not "choose to be alert" and that neither the Public Prosecutor in the Sessions Court nor the Sessions Judge himself "choose to be alert in subjecting P.W. 1, to further questioning". This demonstrates how the High Court erred in applying the principles which govern appeals against acquittal. There is not the slightest doubt that, at the least, two views of the evidence were reasonably possible. The learned Sessions Judge had taken one view and the High Court should not have substituted its own view for that of the Sessions Court.

18. One Santhanam Servai, P.W. 6, who was examined by the prosecution was treated as a hostile witness. The High Court acted on his testimony which according to it was "natural and convincing". Indeed, after noticing a serious contradiction in the evidence of this hostile witness, the High Court proceeded to hold that the evidence of P. Ws. 1 to 5 received "the strongest corroboration" from the contradiction in the evidence of P.W. 6. It is not easy to understand this approach. A hostile witness may not be rejected outright but the court has at least to be aware that, prima facie, a witness who makes different statements at different times has no regard for truth. The court should therefore be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence. Far from doing so, the High Court utilised a contradiction in the evidence of the hostile witness for 'corroborating the evidence of five other witnesses.

19. If the evidence of Alagiri Chettiar is rejected, it is impossible to convict the appellants of the charge that they committed the murder of Andar Chettiar. The evidence of recoveries suffers from

the infirmity that P.W. 8, who was supposed to prove the recovery Panchanamas, turned hostile. When the appellants' counsel argued before the High Court that, at best, the evidence in regard to the recoveries may show that the appellants are morally, though not legally, guilty, the High Court observed: "We are unable to appreciate the subtleties of moral guilt as contrasted with the legal proof of guilt or conviction". Strictly, it is not correct that recoveries of incriminating articles afford only moral proof of guilt. But it seems necessary to say that the distinction between a moral assurance that an accused is guilty and the legal proof of guilt is not subtle but substantial and transparent. The distinction is worthy of understanding and acceptance.

20. It is nice to think that after all, the High Court did not sentence the appellants to death but even there, it gave a wrong reason for imposing the lesser sentence. The High Court says that normally it would not have hesitated to award the death sentence to the appellants but since it was dealing with an appeal against acquittal it was disposed to impose the lesser sentence. Once again, the High Court overlooked what many of the several decisions cited by it lay down: the powers of the High Court in an appeal against acquittal are as wide as its powers in an appeal against conviction. That the High Court was dealing with an order of acquittal was hardly any reason for imposing the lesser sentence, if the sentence of death was otherwise called for.

21. For these reasons we allow this appeal, set aside the judgment of the High Court and restore the order of acquittal passed by the Sessions Court.