

Dorai Alias Mariappan

v.

State of T.N

JUSTICE B.N. AGRAWAL AND H.K. SEMA, JJ

(Supreme Court Of India)

Criminal Appeal No. 1205 Of 2003 | 20-07-2004

1. Heard learned counsel for the parties.

2. The appellant was convicted by the trial court under S.302 of the Penal Code and sentenced to undergo imprisonment for life. He was further convicted under S.148 and 341 of the Penal Code and sentenced to undergo rigorous imprisonment for two years and one month respectively. Other accused persons were convicted under S.302/149 of the Penal Code and sentenced to undergo imprisonment for life. They were also convicted under S.147 and 341 of the Penal Code and sentenced to undergo rigorous imprisonment for one year and one month respectively. The sentences, however, were ordered to run concurrently. On appeal being preferred, convictions of the appellant have been upheld but other accused persons were acquitted of all the charges. Hence this appeal by special leave.

3. According to the prosecution case, the appellant is the sole assailant and he is said to have inflicted knife - blow on the victim. According to the prosecution case and evidence, the deceased was accompanied by PW 1 who is nobody other than his son. Apart from him, the prosecution examined PW 2 who was the son inlaw of the deceased. So far as PW 2 is concerned, he has been disbelieved by the trial court as well as the High Court. Thus, there remains the evidence of PW 1 alone.

4. In our view, it would not be safe to place reliance upon PW 1 in view of the facts stated hereinafter. PW 1 was accused in a case of kidnapping of the daughter of Accused 2, which case was filed eight months prior to the date of

the alleged occurrence. This witness stated that he informed his uncle Velusamy about the occurrence who along with him went to the police station to lodge the first information report. But for reasons best known to the prosecution Velusamy has not been examined and no explanation is forthcoming for his non examination. That apart, PW 1 further stated that he informed one Arjunam as well as Mahesh of the occurrence immediately after the occurrence but these two witnesses have also been withheld from the witness box and no explanation is forthcoming. PW 1 stated that immediately after the occurrence his mother arrived at the place of occurrence at 2.30 a.m. and at the same time the police also arrived to whom this witness gave his statement but the same was not taken note of. It is not known whether the appellant was named or not in the said statement which could have been the first version of the occurrence and no explanation has been furnished by the prosecution as to why the police did not take statement of this witness at the place of occurrence itself on the fateful night at 2.30 a.m. As the police was there, statement given by this witness should have been taken by the police and forwarded to the police station for recording the first information report and there could have been no reason for PW 1 to go to the police station for lodging the first information report. In view of the aforesaid infirmities in the evidence of PW 1, it is not possible to place reliance upon him. For the foregoing reasons we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding his conviction.

5. Accordingly, the appeal is allowed, convictions and sentences awarded against the appellant are set aside and he is acquitted of all the charges. The appellant who is in custody is directed to be released forthwith, if not required in connection with any other case.