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Cr1.A.No. 1205 OF 2003
ITEM NO. 108
COURT No. 8

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 1205/2003

Dorai @ Mariappan

Appellant(s)

Versus

State of Tamil Nadu

Respondent(s)

(with office report)

DATE : 20/07/2004

This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. V Krishna Murthy, Adv.

For Respondent(s)
Mr. Subramonium Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

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.

[Charanjeet Kaur]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1205 OF 2003

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Appellant(s)

Versus

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O R D E R

Heard learned counsel for the parties.

The appellant was convicted by trial Court under Section 302 of the Penal Code and sentenced to undergo imprisonment for life. He was further convicted under Sections 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 Section 302/149 of the Penal code and sentenced to undergo imprisonment for life. They were also convicted under Sections 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 person acquitted of all the charges. Hence this appeal by special leave.

According to the prosecution case, appellant is the sole assailant and he is said to have inflicted knife blow to the victim. According to the prosecution case and evidence, the deceased was accompanied by P.W. 1 who is nobody else than his son. Apart from him, prosecution examined P.W. 2 who was

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his Son-in-Law of the deceased. So far P.W. 2 is concerned, he has been disbelieved by trial Court as well as the High Court. Thus, there remains the evidence of P.W. 1 alone.

In our view, it would not be safe to place reliance upon P.W. 1 in view of the facts stated hereinafter. P.W. 1 was accused in a case of kidnapping of daughter of accused No. 2, which case was filed eight months prior to the date of 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 First Information Report. But for the reasons best known to the prosecution Velusamy has not been examined and no explanation is forthcoming for his non-examination. That apart, P.W. 1 further stated that he informed about the occurrence to one Arjunam as well as Mahesh immediately after the occurrence but these two witnesses have been also withheld from the witness box and no explanation is

forthcoming. P.W. 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 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 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 First Information Report and

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there could have been no reason for P.W. 1 to go to the police station for lodging the First Information Report. In view of the aforesaid infirmities in the evidence of P.W. 1, it is not possible to place reliance upon him. For the foregoing reasons we are of the view the prosecution has failed to prove its case beyond reasonable doubts and the High court was not justified in upholding his conviction.

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.

.....J[B.N. AGRAWAL]

.....J [H.K. SEMA]

NEW DELHI,
JULY 20, 2004.

