

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

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NOS. 819-820 OF 2005

AROKIA THOMAS

Appellant (s)

VERSUS

STATE OF TAMIL NADU

Respondent(s)

(With office report)

Date: 02/05/2006 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE D.K. JAIN

For Appellant(s)

Mr. R. Sunderavardan, Sr. Adv.

Mr. V.G. Pragasam, Adv.

For Respondent(s)

Mr. Subramonium Prasad, Adv.

Mr. Abhay Kumar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The appeals are allowed, conviction and sentence of the appellant and accused-Dhanasekaran are set aside and both of them are acquitted of all the charges. Both the accused persons are directed to be released forthwith, if not required in connection with any other case.

[Alka Dudeja]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 819-820 OF 2005

Arokia Thomas

...Appellant(s)

Versus

State of Tamil Nadu

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

The appellant, along with accused-Dhanasekaran, was tried and by judgment rendered by the trial court accused-Dhanasekaran was convicted under Section 302 of the Indian

Penal Code [for short, 'I.P.C.'] and sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-; in default to undergo further imprisonment for a period of six months. So far as the appellant is concerned, he was convicted under Section 304 Part II I.P.C. and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.3,000/-; in default to undergo further imprisonment for a period of three months.

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Before the High Court, two appeals were preferred by the convicted accused persons, including the appellant, whereas third appeal was preferred by the State. The appeals filed by the accused persons have been dismissed, whereas the same filed on behalf of the State allowed and conviction of the appellant has been altered from Section 304 Part II I.P.C. to Section 302 read with Section 34 I.P.C. and he has been sentenced to undergo imprisonment for life. So far as accused-Dhanasekaran is concerned, he did not move this Court challenging his conviction. The present appeals have been filed by the appellant alone. The crucial question to be examined in the present case is as to whether the two witnesses, namely P.Ws 1 and 13 (Rajendran and Sundaramoorthy), who claimed to be eye-witnesses could have

identified the accused persons. Undisputedly, at the place of occurrence, there was no electric light. In the first information report, it has nowhere been stated that as to what was the source of light in which the witnesses identified the accused persons. When the question was put to P.W.1 by the investigating officer during the course of investigation as to whether he identified the accused persons in torch light, moonlit night or in the light of the vehicle, he kept mum and nowhere stated before the Police that he identified the accused persons in the light of the vehicle. For the first time it appears that P.W.1 has disclosed in his evidence before the Sessions Court after more than two and half years of the date of occurrence that he identified the accused persons in

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the light of motor cycle. Apart from P.W.1, P.W.13 is another eye witness, who claims to have identified the accused persons. So far as this witness is concerned, he claims to have identified the accused persons in the torch light from a distance of 400 feet, which appears to be highly improbable. In view of the statement by P.W.13 that the accused persons were identified in the torch light, the evidence of P.W.1 disclosing that he identified the accused persons in the light of vehicle is highly doubtful,

especially when this statement has been made for the first time in the Sessions Court. In this state of affairs, it is not possible to uphold conviction of the appellant on the basis of evidence of P.Ws 1 and 13 especially in view of the fact that there is no other material for upholding the conviction. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the appellant is entitled to benefit of doubt.

So far as accused-Dhanasekaran is concerned, it is true that he has not preferred any appeal, but in view of our finding aforementioned that the prosecution case is highly doubtful and there is no ground for distinguishing case of accused-Dhanasekaran from that of the appellant, we are of the view that he is also entitled to acquittal irrespective of the fact that he has not moved this Court.

Accordingly, the appeals are allowed, conviction and sentence of the appellant and accused-Dhanasekaran are set

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aside and both of them are acquitted of all the charges. Both the accused persons are directed to be released forthwith, if not required in connection with any other case.

.....J.

[B.N. AGRAWAL]

.....J.

[D.K. JAIN]

New Delhi,

May 02, 2006.