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Crl.A.No. 273 OF 2004

ITEM NO.102

COURT NO.8

SECTION IIA

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.273 OF 2004

SUBRAMANI

Appellant (s)

VERSUS

STATE OF TAMIL NADU & ANR.

Respondent(s)

(With office report )

Date: 25/08/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL  
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s)Mr. R. Nedumaran,Adv.  
Mr. S. Beno Bencigar, Adv.

For Respondent(s)Mr. Abhay Kumar, Adv.  
Mr. R. Gopala Krishnan, Adv.  
Mr. Subramonium Prasad,Adv.

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

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

[ Alka Dudeja ] [ Om Prakash ]  
Court Master Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.273 OF 2004

Subramani ... Appellant (s)

Versus

O R D E R

Heard learned counsel for the parties.

The appellant, along with two other accused persons, was tried and by judgment rendered by Trial Court, accused No. 1 was convicted under Section 302 of the Indian Penal Code [for short, 'I.P.C.'], whereas the appellant, who was accused No. 2, and accused No. 3 were convicted under Section 302 read with Section 34 I.P.C. and all of them were sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- each; in default to undergo further imprisonment for a period of three months. The appellant was further convicted under Section 307 I.P.C., whereas the other two accused persons were convicted under Section 307 read with Section 34 I.P.C. and one of them was sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/-; in default to undergo further imprisonment for three months. The sentences, however, were ordered to run concurrently. On appeal being preferred, the High Court acquitted accused No. 3, whereas upheld convictions of the other two accused persons, including the appellant. Out of the two persons, whose convictions have

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been upheld by the High Court, accused No. 1 did not move this Court, whereas the present appeal by special leave by the appellant, accused No. 2. In the present case, occurrence is said to have taken place on 18th December, 1993 at 1.30 p.m. and first information report was lodged on the same day at the concerned police station at 2.00 p.m. P.W. 1 is the first informant, whereas P.W.2 is an attesting witness to the First Information Report and both of them are relatives; P.W.1, being son in-law of the deceased, and P.W.2, his son. In the First Information Report, accused No. 1 was named, whereas it was stated that other two accused persons were unknown. As, according to the prosecution case, accused Nos. 2 and 3 were not known, test identification parades were held on different dates in which P.Ws 1 and 2 have identified the appellant and accused No. 1.

Learned counsel for the appellant submitted that the appellant was known to the prosecution witnesses from before, as such the so-called identification in the test identification parade was farce. P.W.1 has admitted in his evidence that he disclosed name and address of the appellant in his subsequent statement made before the police during the course of investigation. The witness, however, admitted that on 30th November, 1993, that is, about 18 days before the date of alleged occurrence, the deceased was likely to sell his land to the appellant. These facts show that the appellant was very well known to P.W.1 and so far as P.W.2 is concerned, he is nobody else but son of deceased and he also accompanied P.W.1 to the Police Station for lodging the First Information Report, in as much as he was an attesting witness to the First Information Report. We really fail to understand, if the appellant was known to the informant from before, what prevented him to disclose his

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name especially when name of accused No. 1 was very much disclosed in the First Information Report. 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 conviction of the appellant.

In the result, the appeal is allowed, convictions and sentences of the appellant are set aside and he is acquitted of 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,  
August 25, 2004.