

Crl.A.839/2000

The Accused Amaravathi, the Appellant herein was directed to be released on bail as per order of this Court dated 10.10.2000 and made in Crl.M.P.6759/2000 in CA 839/2000.

Crl.A.472/2001

The Accused Idumban, the Appellant herein was directed to be released on bail as per order of this Court dated.16.8.2001 and made in Crl.M.P.4886 of 2001 in CA 472/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 839 OF 2000 & 472 OF 2001

Amaravathi

.. Appellant in CA No.839/2000

Idumban

.. Appellant in CA No.472/2001

- Vs -

State rep. by  
Inspector of Police  
Karimangalam Police Station  
Dharmapuri District.

.. Respondent in both the appeals

Appeals preferred against the conviction and sentence passed by the learned II Addl. Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri, made in S.C. No. 201 of 1999 dated 10.08.2000 as stated therein.

For Appellant in : Mr. V.Gopinath, SC, for  
C.A. No.472/01 M/s. K.Selvarangan for A-1

For Appellant in : Mr. V.Gopinath, SC, for  
C.A. No.839/00 Mr. C.C.S. Pillai for A-2

For Respondent : Mr. V.Jayaprakash Narayanan  
Govt. Advocate (Crl. Side)

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

This judgment shall govern the above two appeals. C.A. No.839/00

is by A-2 and C.A. No.472/01 is by A-1 in S.C. No.201 of 1999 on the file of the II Addl. Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri. The appellants were charged under Sections 302 and 201 IPC and on being found guilty, they were sentenced to imprisonment for life and directed to pay a fine of Rs.1,000/= with a default sentence of three months for the former offence and they were sentenced to three years rigorous imprisonment and directed to pay a fine of Rs.1,000/= with a default sentence of three months for the latter offence. Hence, the present appeals by the appellants challenging their conviction and sentence.

2. The short facts necessary for the disposal of these appeals are as follows :-

P.W.1 is the son of the deceased while P.W.3 is the wife of the deceased. They were residents of Solliyampalli village. A-1 and A-2 also belong to the same village. On 17.1.99, at about 4.00 p.m., A-1 came to the house of the deceased and asked P.W.1 as to the whereabouts of his father in order to take him along with him for having mutton food. P.W.1 informed A-1 that the deceased was in the house of Madheswaran so as to enable A-1 to go and take the deceased for taking food. Accordingly, A-1 went and took the deceased outside for taking food. Till about 8.30 p.m. the deceased did not return. Therefore, P.W.3, the wife of the deceased gave P.W.1 a torch and asked him to go in search of his father. P.W.1 took the torch, M.O.1 and went in search of his father. When he was just crossing the cane field of Ranganathan Chettiar, he heard the distressing cries of his father. When he reached there, he found A-1 attacking his father with a spade, while A-2 was stabbing him on his chest and other parts of the body. P.W.1, on seeing this, shouted for help. A-1 threatened him with dire consequences. Immediately P.W.1 ran away from the place. Thereafter, A-1 and A-2 took the dead body of the deceased and dropped it inside the well situate on the backside of the house of P.W.1.

3. P.W.1, from the scene of occurrence, proceeded to Sengodapatti village to inform about the occurrence to his uncle, P.W.6. He reached the place at about twelve midnight and informed about the occurrence to P.W.6. Both P.W.s 1 and 6 returned to the village and they saw the dead body inside the well situate at the backside of the house of P.W.1. They took the dead body out of the well. P.W.3 also came out and the villagers gathered.

4. On 18.1.99 at about 6.00 a.m., P.W.2, the Village Administrative Officer came to know about the occurrence. A report was given to him, which stands marked as Ex.P-1 and along with the report, Ex.P-1, P.W.2, the Village Administrative Officer proceeded to Karimangalam police station where P.W.17, the Sub-Inspector of Police was on duty to whom Ex.P-1 and Ex.P-3, the report of the Village Administrative Officer, were handed over. On the strength of the same, P.W.17 registered a case in crime No.70/99. The printed first information report, Ex.P-24 was despatched to court.

5. On receipt of a copy of the printed first information report,

P.W.19, the Inspector of Police, took up investigation. He proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex.P-2 and drew a rough sketch, Ex.P-25. M.O.s 5 and 6, bloodstained earth and sample earth were recovered under a mahazar. The dead body was caused to be photographed through P.W.16, the photographer and the photographs are marked as M.O.14 series. Thereafter, the investigating officer conducted inquest over the dead body of the deceased in the presence of witnesses and panchayatadars and prepared inquest report, Ex.P-25. After the inquest, the dead body was handed over to a police constable with a requisition to the doctor for conducting autopsy.

6. On receipt of the requisition, P.W.14, Civil Assistant Surgeon attached to the Government Headquarters Hospital, Dharmapuri, conducted autopsy on the dead body of the deceased and found the following injuries :-

- "1) A laceration back of scalp 12 cm x 3 cm x bone deep underlying bone found fractured.
- 2) Cut injury below right cheek 5 cm x 1 cm x ½ cm bone deep.
- 3) Cut injury left side cheek 3 cm x 1 cm x ½ cm. Underlying mandible was found fractured.
- 4) Diffuse contusion front of neck.
- 5) Bleeding right ear and bleeding from mouth present."

The doctor issued Ex.P-21, the post-mortem certificate, opining that the deceased would appear to have died of head injury 36 to 48 hours prior to autopsy.

7. In the meantime, A-1 and A-2 were caught by the villagers and they were produced at the police station at about twelve noon on 18.1.99. They were arrested. A-1 gave a voluntary confessional statement, the admissible portion of which is marked as Ex.P-18, pursuant to which A-1 produced M.O.6 and A-2 produced M.O.7 and they were seized under a mahazar, Ex.P-7. All the material objects recovered from the scene of occurrence, from the dead body of the deceased and from the accused were sent to court along with a requisition to send them for analysis. Accordingly the material objects were subjected to analysis, which resulted in the receipt of Ex.P-17, chemical analysis report and Ex.P-18, serology report. On the completion of investigation, final report was filed against the appellants by the investigating officer. The case was committed to the court of sessions, necessary charges were framed by the sessions court and the case was taken up for trial.

8. In order to substantiate the charges levelled against the accused, the prosecution marched nineteen witnesses and relied on twenty-six exhibits and fourteen material objects. On the completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witness was examined. The



trial court heard the arguments advanced by either side and after a thorough scrutiny of the materials available before it, found the accused guilty as per the charges and awarded the punishment as referred to above. Hence, these two appeals.

9. The learned senior counsel leading the arguments for the appellants inter alia made the following submissions. In the instant case, the only eye witness, according to the prosecution, was P.W.1. It is highly doubtful whether P.W.1 would have been present at the time of occurrence at all. According to the prosecution, the occurrence has taken place at 9.00 p.m. and it was also witnessed by P.W.1. But P.W.1, though claimed to have witnessed the occurrence, has not gone back to inform his mother at his house which is situate nearby or inform any of the villagers calling for their help, but he has proceeded to the place of his uncle, P.W.6, which is admittedly situate eighteen kilometres away from the place of occurrence. It is pertinent to point out that on the way the Palakode police station is situate. Neither on the way to Sengodapatti to the house of P.W.6 nor after seeing him on return from the place to his village along with P.W.6, P.W.1 had informed the police authorities about the occurrence and lodged a complaint. It is pertinent to point out that P.W.6 even after the information about the crime has not started from the place immediately, but has retained P.W.1 for an hour and only, thereafter, they have started from the place and both of them after coming to the house of P.W.1 found the dead body. Nowhere in their evidence it is stated as to how the witnesses came to know that the dead body was inside the well situate at the back of the house of P.W.1. The further case of the prosecution, which is highly improbable, was that A-1 and A-2 after attacking and causing the death of the deceased at the place of occurrence have taken the risk of carrying the dead body for nearly two furlongs along the field and dropped the body inside the well situate in the back of the house of P.W.1. This casts a doubt as to whether the occurrence could have taken place as putforth by the prosecution and whether P.W.1 could have seen the occurrence at all. In the instant case, even after reaching the house, neither P.W.1 nor P.W.6 inform P.W.3 the wife of the deceased, who was sleeping inside the house. According to P.W.3, after hearing the cries at about 5.00 a.m., she came out of the house and saw the dead body. All these facts would go to show that P.W.1 could not have seen the occurrence and that P.W.1 after seeing the dead body has given a report as if he has seen the occurrence implicating both the accused in the crime. Added further the learned senior counsel, the overt acts attributed to A-2 is thoroughly artificial, in that, A-1 attacked the deceased and the deceased fell down and that A-2 sat on the chest of the deceased and stabbed him. All the above facts would go to show that the evidence of P.W.1 should have been brushed aside as one unbelievable and unacceptable. In the circumstances, in the absence of any acceptable legal evidence other than the evidence of P.W.1, the prosecution had no case at all. Apart from that, the alleged recovery of the weapons based on the confessional statement was nothing but a subsequent introduction in order to strengthen the prosecution case, if possible, but in vain. In the circumstances, the trial court should have acquitted the accused outright, but has found them guilty erroneously, which has got to be set right by this Court.

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10. This Court heard the learned Addl. Public Prosecutor appearing for the State on the above contentions and also perused the recorded evidence, both oral and documentary.

11. It is no doubt true that the prosecution has succeeded in establishing the cause of death of the deceased, Sevethan, by examining P.W.14, the doctor, who conducted autopsy and the post-mortem certificate, Ex.P-21 issued by him. The doctor has opined that death was on account of head injury. The evidence of the doctor and the post-mortem certificate, Ex.P-21 issued by him, conclusively establish that the deceased, Sevethan, died on account of homicidal violence. The said fact was not disputed by the appellants before the trial court nor it is disputed before this Court. On the medical evidence we hold that the deceased died on account of homicidal violence.

12. In the instant case, the prosecution came with specific charges against the appellants that both of them attacked the deceased at about 9.00 p.m. on the night of 17.1.99 and after putting an end to the life of the deceased, the appellants took the dead body from the scene of occurrence and dropped the same into the well, which is situate on the backside of the house of P.W.1. In the instant case, P.W.1 was the only eye witness to the occurrence. It is settled principle of law that even if the prosecution has got only one eye witness and if the witness is believable, the Court could render a judgment of conviction. But in the instant case, P.W.1 was the son of the deceased and, hence, his evidence has got to be looked into and scrutinised with great care and caution. If that test is exercised on his evidence, this Court has no option other than to reject his testimony as one false.

13. According to the prosecution, the occurrence has taken place at about 9.00 p.m. when P.W.1 went in search of his father with the torch, M.O.1 and that when he was just crossing the cane field of Ranganatha Chettiar, he heard the distressing cries of his father and when he looked that side, he found A-1 and A-2 attacking his father with a spade and knife and when he shouted he was threatened and that he ran away from the place. Had it been true, the natural conduct of any prudent person in the circumstances would be to go to his house immediately and inform his mother and to call the neighbours and villagers for help. But P.W.1 did not do so. Instead, he proceeded all the way to Sengodapatti village, which is situate eighteen kilometres away, in the dark hours in order to inform his uncle, P.W.6. According to the evidence of P.W.6, even after P.W.1 informed him, he did not immediately proceed from his house, but he retained P.W.1 for an hour and, thereafter both of them started. It is an admitted fact that from the place of occurrence when P.W.1 proceeded to Sengodapatti, Palakode police station is situate on the way. It is pertinent to point out that neither on the way to Sengodapatti to the house of P.W.6 nor after seeing him and on return from the place to his village along with P.W.6, P.W.1 had informed the police authorities about the occurrence and lodged a complaint, but both of them, namely, P.W.s 1 and 6 went directly to the house of P.W.1 and

found the body in the well situate on the backside of the house of P.W.1. It is not the evidence of P.W.1 that he saw both the accused carrying the dead body and dropping it inside the well.

14. At this juncture it has to be pointed out that it is highly artificial on the side of the prosecution to putforth a case that the appellants, after committing the murder, took the dead body from the scene of occurrence to the well, which is situate at the backside of the house of P.W.1, which is about two furlongs away. It is to be pointed out that both the appellants would have entertained a risk of taking the body, which nobody would take and, therefore, it is highly doubtful whether the occurrence would have taken place as putforth by the prosecution.

15. Now apart from the above, the further conduct of P.W.1 that he did not inform his mother even after returning to the house bringing along with him P.W.6 is too tall a claim to be believed and the same is also falsified by the evidence of P.W.3 herself. According to P.W.3, who is the wife of the deceased, after sending her son P.W.1 during night hours in search of the deceased, she went to bed and she woke up only at 5.30 a.m. on hearing the alarm and she opened the house and she found P.W.s 1 and 6 in the backside of the house and the body of the deceased was also lying there. This therefore shows that P.W.3 came to know about the occurrence only about 5.30 a.m., nearly eight and half hours later to the occurrence. The evidence of P.W.3 falsifies the evidence of P.W.1 and casts a doubt on the evidence of P.W.1 as to whether he could have witnessed the occurrence.

16. The facts, which we have narrated above, would go to show that in the instant case the evidence of P.W.1 remains uncorroborated and, therefore, it would be highly unsafe to accept such an interested and uncorroborated testimony and find the appellants guilty, which the trial court has failed to appreciate and, therefore, the appellants are entitled for acquittal.

17. In result, the conviction and sentence awarded by the trial court are set aside and the appellants are acquitted of all the charges framed against them. The criminal appeals are allowed. It is reported that the appellants are on bail. Bail bonds executed by them shall stand cancelled.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar



To

1) The Judicial Magistrate, Palacode.

1a) The II Addl. Sessions Judge-cum-Chief Judicial Magistrate  
Dharmapuri at Krishnagiri.

2) -Do- Thro' The Principal Sessions Judge, Dharmapuri at Krishnagiri.

3) The District Collector, Dharmapuri.

4) The Director General of Police, Chennai.

5) The Public Prosecutor, High Court, Madras.

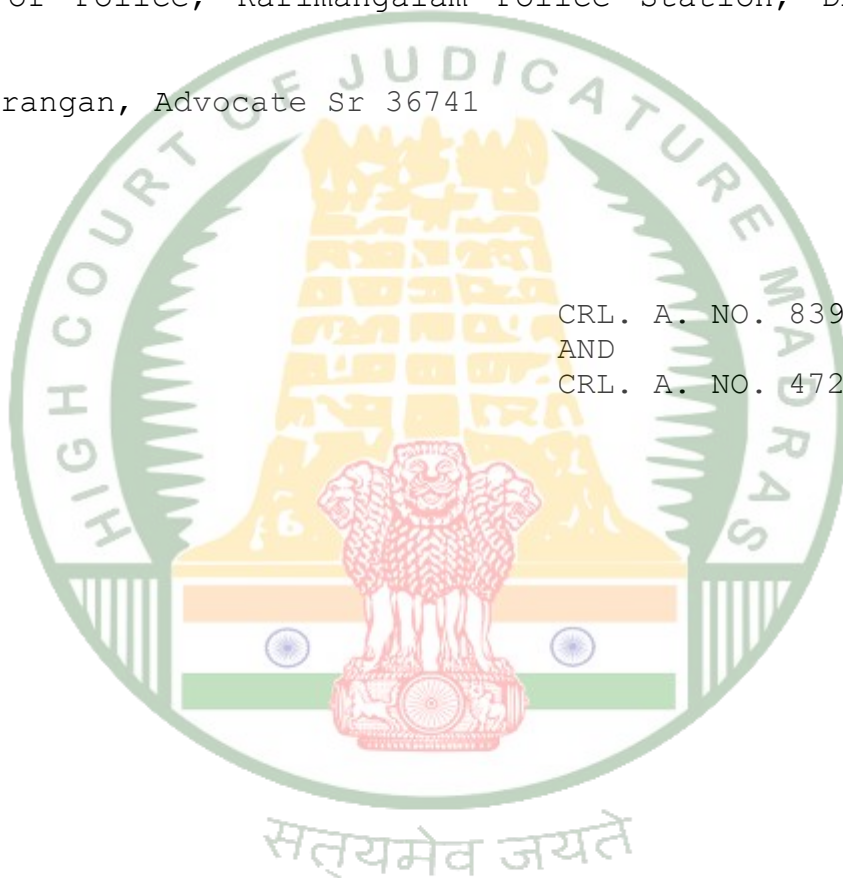
6) The Superintendent of Central Prison, Salem.

7) The Inspector of Police, Karimangalam Police Station, Dharmapuri  
Dt.

+1cc to Mr.K.Selvarangan, Advocate Sr 36741

AVA (CO)

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AND  
CRL. A. NO. 472 OF 2001

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