IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/06/2003

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE T.V. MASILAMANI

Criminal Appeal No. 857 of 2000

Rajesh Babu alias Rajesh alias
Rajeshkumar alias Babu ... Appellant.

-Vs-

State rep. by
Inspector of Police,
Thuraiyur Police Station,
Thuraiyur, Tiruchirapalli District. ... Respondent

Prayer: Appeal against the judgment passed by the learned I Additional Sessions Judge -cum- Chief Judicial Magistrate, Tiruchirapalli, in S.C.No. 164 of 1999 dated : 15.3.2000.

!For Appellant : Mr.S.Anbalagan for
Mr.K.J.Nithianandam

^For Respondent : Mr.S. Jayakumar
Additional Public Prosecutor.

:JUDGMENT

x(Judgment of the Court was delivered by N. DHINAKAR, J)

The first accused in S.C.No. 164 of 1999 on the file of the learned I Additional Sessions Judge -cum- Chief Judicial Magistrate, Tiruchirapalli, is the appellant. He was tried along with Renganathan, who was arrayed as "A.2". In the judgment, the appellant and the said Renganathan, who has not chosen to prefer an appeal and who was tried as A.2 before the learned Sessions judge, will be referred to as "A.1 and A.2" respectively for the sake of convenience.

2. The allegation against A.1 (appellant) and A.2 is that they trespassed into the house of Muthusamy Guptha, who hereinafter will be referred to as "D.1" and Jayalakshmi, who hereinafter will be referred to as "D.2", on the night of 27.10.1998 and that A.1 caused the death of D.2, his

grandmother, while A.2 caused the death of D.1, who is the husband of D.2, by inflicting injuries upon them and that after the death of D.1 and D.2, removed the gold ornaments, M.Os.1 to 6, which were in their possession.

3. The learned Sessions Judge, finding both the accused guilty under Section 449 IPC., sentenced each one of them to rigorous imprisonment for seven years and also directed each one of them to pay a fine of Rs.1000/- with a default sentence of six months rigorous imprisonment. A.2, on being convicted under charge No.2 for causing the death of D.1, was sentenced to imprisonment for life and the learned Sessions Judge also imposed upon him a fine of Rs.1000/- with a further direction that in default of payment of fine amount, he will suffer rigorous imprisonment for six months. On convicting A.1 under Charge No.3 for murdering D.2, he was sentenced to imprisonment for life and was also directed to pay a fine of Rs.1,000/- with a further direction that in default of payment of fine, he will suffer rigorous imprisonment for six months. Both the accused were found guilty under Section 404 IPC. for which each one of them was sentenced to two years rigorous imprisonment and also to pay a fine of Rs.1000/- each with a default sentence of six months rigorous imprisonment.

4. A.1 has chosen to prefer the above appeal aggrieved by the said order of conviction and sentence. A.2, who was tried and convicted by the trial Court, did not prefer any appeal and therefore, we confine our discussion to the case of A.1 alone.

5. The case of the prosecution can be briefly summarised as follows:- A.1 is the son of P.W.5 and P.W.5 is the son of D.1, Muthusamy Guptha and D.2, Jayalakshmi, who is the wife of D.1. P.W.1 is the nephew of D.1 and P.W.6 is the daughter of D.1 and D.2. P.W.5 was residing at Tiruchirapalli and was working as a clerk in a textile shop. D.1 and D.2 were residing at Kottathur from 1. 12.1991, which was at a distance of 20 kilometers from Tiruchirapalli. A.1 completed his school education in the year 1992 and was employed in a jewellary shop. He developed bad habits and was also addicted to drugs. He was dismissed from his job. P.W.5, the father of A.1, finding his son (A.1) not mending his ways and that he is of incorrigible character, chased him out of the house. As P.W.5 was not in good terms with his parents, he was not visiting them. While the matters stood thus, P.W.7, a neighbour of D.1 and D.2 , finding that the milk left at the door step by the milkman not taken into the house, informed P.W.1, the nephew of D.1, about the said fact expressing some suspicion. P.W.1, on being informed by P.W.7 at about 2.30 p.m. on 28.10.1998, went to the house of D.1 and D.2 and finding the door open, entered the house. Inside the house, he found blood-stains. P.W.1 found D.1 and D.2 lying dead in the store room. Their toes on the legs were also found tied. P.W.1 realised that they must have been murdered on account of the injuries found on the bodies of D.1 and D.2. He also noticed that thali chain, M.O.2, which D.2 was wearing, bangles, M.O.3, pottu thali, M.O.4, thali gundu, M.O.5, gold coin attached to thali chain, and M.O.6, one of the mattals (the ornament, which is normally worn in this part of the country by the women folk along with the ear ring) were found missing on the dead body of D.2. He immediately went to Thuraiyur Police Station, where he gave a complaint, Ex.P.1 to P.W.19, the Head Constable. The relatives also were

informed.

6. On receiving the oral complaint from P.W.1, P.W.19 reduced the said oral complaint into writing and the same stands marked as Ex.P.1 in the case. On the basis of the complaint, Ex.P.1, he registered a case in Crime No. 900 of 1998 under Sections 302 and 380 IPC. against unknown accused. The printed copy of the first information report in the said crime is Ex.P.18. He informed the higher officials and also despatched Exs.P.1 and P.18 to the Court. The investigation in the crime was taken up by P.W.20, the Inspector of Police, Thuraiyur Police Station.

7. P.W.20, the Inspector of Police, on taking up investigation in the crime after receiving a copy of the first information report, proceeded to the scene of occurrence. At the scene of occurrence, P.W.20 prepared an observation mahazar, Ex.P.8. He drew a rough sketch, Ex.P.19. He seized a blood-stained paper, M.O.22 and two papers containing blood-stains, M.O.23 series. He noticed M.O.10, spade, M.O.20, a banian, M.O.21, a cloth with advertisement and M.O.24, a piece of paper containing blood-stains, near the dead body of D.1. Near the dead body of D.2, he noticed M.O.25, a piece of paper containing blood-stains and M.O.26, a white plate. He also found M.O.27, a vessel, M.O.28, stove wicks and all the above items were seized under a mahazar Ex.P.9 attested by P.W.13. The inquest over the body of D.1 was conducted between 9.30 p.m. and 11.30 p.m. by preparing inquest report, Ex.P.20, in the presence of Panchayatdars and the inquest over the body of D.2 was conducted between 11.30 p.m. and 1.30 a.m. by preparing inquest report, Ex.P.21. At the time of inquest over the two dead bodies, he questioned P.Ws.1, 5, 6 and others and their statements were recorded. After the inquest, the two dead bodies were sent with requisitions, Exs.P.2 and P.4, to the medical authorities for conducting autopsy.

8. On receipt of the requisition, P.W.2, Civil Assistant Surgeon attached to Government Hospital, Thuraiyur, conducted autopsy on the body of D.1 and found the following:-

EXTERNAL INJURY:- Lacerated injury over the front side head frontal area 6 x 2 cm x bone depth. Blood clot present.

"INTERNAL EXAMINATION:- Multiple fracture of frontal bone vertical and transverse 3-4 cm in length. Blood clot present over the inner layer of the brain (Duramatter) and brain lacerated corresponding to the injury. Stomach: About 200 ml of undigested food particles present. No specific odour. Hyoid bone intact. Lungs, spleen, liver kidneys pale."

The doctor issued Ex.P.3, post-mortem certificate, with his opinion that the deceased died on account of the head injury about 32 to 40 hours prior to autopsy. The autopsy on the dead body of D.2 was conducted by P.W.3, Civil Assistant Surgeon attached to Government Hospital, Thuraiyur and he found the following:-
EXTERNAL INJURIES:-
1. A lacerated injury over back of head occipital area4cmsx 2cmsx bone

depth.

2.Body bloated. Bleeding from both nose present. Eyes closed.

3.External genitalia, breast normal.

INTERNAL EXAMINATION:-
1.Blood clot seen over back of head over occipital area. Multiple fractures present in the occipital bone.

2.Brain: Blood clot present over the duramatter and over brain matter.

3.Liver, Spleen, Lungs and kidneys are pale.

4.Heart: Pale. A clot seen in the left anterior descending artery.

5.About 200 ml of semi-digested food material seen in stomach. No specific odour. Intestine empty.

6.Uterus present shrunken.
The doctor issued Ex.P.5, post-mortem certificate, with his opinion that the deceased died on account of head injury about 32 to 40 hours prior to autopsy.

9. In the meantime, the fingerprint expert, P.W.4, who arrived at the scene, on the requisition of the investigating officer, dusted for the fingerprints and lifted nine fingerprints including the fingerprints found on the wooden almarah. The photographer, P.W.17, was asked to take photographs and accordingly, photographs were taken. On 30 .10.1998, the officer questioned P.Ws.8,9, and 10, the neighbours of D.1 and D.2 and their statements were recorded. On the same day, P. W.17, the photographer, was questioned and his statement was also recorded. On 31.10.1998, Suryanarayanan, the junior paternal uncle of A.1 and Sarath Chandra Gupta were questioned and their statements were recorded. The statement of P.W.19 was also recorded on the same day. On 1.11.1998, P.Ws.2, 3 and 18 were ques tioned and their statements were recorded. He questioned P.W.4, the fingerprint expert and recorded his statement. The material objects were sent to Court with a requisition to forward them for analysis. On an information received, he proceeded to Trichy main road and arrested A.1 at a bus stand, which was near a hospital, along with A.2. Both of them were questioned and A.1 gave a statement. The same was recorded in the presence of P.W.14. The admissible portion of the said statement of A.1 is Ex.P.11. As A.1 was wearing M.O.1, a navarathna chain, the same was seized under a mahazar Ex.P.10 attested by P.W.14. In pursuance of the admissible portion given by A.1, he took the police party to P.W.15 and he was questioned. M.O.2, thali chain,

M.O.3 series, two bangles, M.O.4, pottu thali and M.O.5, thali gundu were produced by P.W.15. They were seized under a mahazar Ex.P.12 attested by P.W.14. The accused were brought to the police station.

10. In the meantime, the fingerprint expert, P.W.4, who examined the

nine fingerprints lifted from the scene of occurrence, found seven of them to tally with the fingerprints of the two deceased; but the other two fingerprints did not tally with the fingerprints of any of the persons, which he compared. Therefore, he kept them separately for future comparison in the event of the officer sending the fingerprint of any other person. Later, P.W.4 compared the fingerprint of Rajeshkumar (A.1), who was also an accused in Crime No.119 of 1998 of Navalpatti Police Station, which was registered under Section 379 IPC. and found it to tally with the fingerprint of A.1 in this case, which was lifted from the scene house. He also compared the fingerprint of A.2, Renganathan, with the other fingerprint and found it to tally with the fingerprint, which was given to him by the police. He issued his report, Ex.P.7.

11. In the meantime, witnesses were summoned to the police station and they identified M.Os.1 to 7 as the gold jewels belonging to D.2 and that D.2 used to wear M.Os.2 to 7 regularly. P.W.15 was questioned and his statement was recorded. On 4.1.1999, he questioned witnesses and recorded their statements. On 9.2.1999 he questioned P.W.4 and recorded his statement and after completing the investigation, P.W.20 filed the final report against the accused under Sections 449, 3 02 and 404 IPC.

12. A.1 was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him. While he denied some of the incriminating circumstances, did not give any answer to question Nos.38 to 47, which were put to him regarding his arrest and the recovery. He filed a written statement. In the said written statement, he has stated that he has visited the house of his grandfather about 2 days prior to the date of incident along with his friend and that he helped them to clean the house. He has further stated that he was employed, during the relevant period, in a petty shop and had written a letter to his family members informing them about his temporary address. He has further alleged in the said written statement that his father and his junior paternal uncle, Suryanarayanan, were not in cordial relationship, since his grandfather was not helping his father on the advice of Suryanarayanan. He has further alleged that he was taken into police custody and detained illegally for about 20 days and that at the instance of Suryanarayanan, who bribed the police officer, a false case had been foisted upon him with a view to prevent the properties going to his family.

13. The learned counsel appearing for A.1/appellant contends that since in the complaint, Ex.P.1, there is no mention about the missing of M.O.1, the subsequent recovery of the said material object from the person of A.1 is not a circumstance against the accused. It is his further submission that since P.W.15 turned hostile, the trial Court ought not to have convicted the accused on the basis of the evidence of P.W.14, who attested the mahazar and it ought not to have accepted the evidence of the investigating officer, P.W.20. He also submits that though the prosecution claimed before the trial Court that P. Ws.8, 10 and 11 were questioned and their statements were recorded on 30.10.1998 under Section 161 Cr.P.C. during the course of investigation, they were received by the Magistrate only on 5.5.1999 and therefore, it is difficult to believe that the statements were recorded on 3

0.10.1998 and for the said submission, he relies upon the evidence of the police officer, who stated in cross-examination that on 30.10.19 98 he did not fix the identity of the accused. On the above contentions, we have heard the learned Additional Public Prosecutor and perused the entire recorded evidence.

14. The cause of the death of D.1 and D.2 is not in dispute. The evidence of the two doctors, P.Ws.2 and 3, who conducted autopsy and who issued the two post-mortem certificates, which we have already referred to in

the earlier part of the judgment, conclusively establish that both of them died on account of homicidal violence. The learned counsel also does not dispute the said fact.

15. The prosecution to establish that the appellant and the other accused, who was arrayed as A.2, committed the murders of D.1 and D.2 and removed the gold ornaments, relied upon circumstantial evidence. It is the settled principle of law that where there is no eyewitness to the murder and the case against the accused depends entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain vide DEONANDAN MISHRA -vs- STATE OF BIHAR (A.I.R. 1955 S.C. 801). The above said view of the Supreme Court was later reiterated in STATE OF MAHARASHTRA -vs- SURESH (2000 S.C.C. (Crl.) 263). Keeping the above principles enunciated by the Supreme Court in mind, we will now analyse the evidence to find out whether the prosecution has succeeded in establishing all the links in the chain of circumstances.

16. P.W.5, the father of A.1, has stated that A.1, after completing his school education, was employed in a jewellery shop, from which job he was dismissed. According to P.W.5, his son developed bad habits and also became a drug addict. He has further stated that he chased away his son as he could not be reformed. The evidence of P.W.5, therefore, shows that A.1 was not living with his parents and was leading a wayward life. P.Ws.8, 10 and 11, the neighbours of D.1 and D.2 , were examined to show that at about 8.00 or 8.30 a.m., A.1 and another went to the house of the deceased. According to them, A.1 and another went to the house of D.1 and after pressing the calling bell, the door was opened and that they entered the house. It is the further evidence of P.W.10 that at about 9.30 p.m., he saw both of them coming out of

the house of D.1 and D.2 and boarding a bus, which came on the main road. Therefore, the evidence of P.Ws.8, 10 and 11 show that on the date of incident, A.1 went to the house of D.1 and D.2 along with another and later, both of them boarded a bus at 9.30 p.m. P.W.12, the conductor of the bus, was examined to show that at Kottathur, both the accused boarded the bus and they alighted at Omandhur. The evidence of P.W.10 that A.1 and another boarded the bus is supported by P.W.12 and the evidence of the above four witnesses establish that A.1 and another were in the house of the deceased on the relevant date at the relevant point of time.

17. The next piece of evidence is the evidence of P.W.7, the neighbour. P.W.7 found the milk left by the milkman at the door step of the deceased and she developed suspicion. Therefore, she went to the house of P.W.1, the nephew of D.1, who was living in the same village and informed him of the fact that the milk left at the door step by the milkman has not been taken into the house. P.W.1, thereafter, went to the house of D.1 and found that the doors were not locked from inside. He entered the house along with other villagers. Inside the store room, P.W.1 and other villagers found two dead bodies and finding injuries on the dead bodies, P.W.1 immediately realised that they have been murdered. P.W.1 also noticed the missing of the gold ornaments on the body of D.2. He went to Thuraiyur police station and gave a complaint, which was registered as a crime by P.W.19, the Head Constable. The evidence of P.Ws.7 and 1 show that after A.1 and another were

allowed to enter the house by D.1 and D.2 at about 8.30 p.m. on the previous day; they were not seen alive by anyone and their dead bodies were seen by P.W.1 and the other villagers on the next day.

18. After the investigation was taken up, the fingerprint expert, P.W.4, was summoned and he lifted nine fingerprints. He examined them and found seven of them to tally with the fingerprints of the two deceased.
19. The investigating officer, during the course of investigation, arrested A.1 and questioned him in the presence of P.W.14. The prosecution though marked the statement of A.1 as Ex.P.11, a perusal of the original shows that it did not mark the admissible portion of the said statement and had chosen to mark the entire statement of A.1 given by him to the investigating officer. We are surprised that the Public Prosecutor has chosen to mark the entire statement of the accused given to a police officer as admissible portion, since any statement given by a person to a police officer is in admissible in evidence and the trial Judge ought to have applied her mind before she allowed the prosecution to mark the entire statement given to a police officer by the accused person. The Public Prosecutor and the trial Judge were not careful to mark the relevant portion of the statement of the accused, which is admissible under Section 27 of the Evidence Act as Ex.P.11 and the marking of the entire statement of the accused is bad in law and this Court finds it difficult to place reliance upon the said statement as it is inadmissible in evidence. This will not deter us from proceeding further to find out whether the ornaments were recovered at the instance of A.1. It is the case of the prosecution that A.1, after giving a statement to a police officer, pointed P.W.15. It is to be remembered at this stage that though

pointing out P.W.1 5 may not fall within the ambit of Section 27 of the Evidence Act, the evidence of the police officer that the accused pointed out P.W.15 can be taken into consideration showing the conduct of the accused, which is relevant under Section 8 of the Evidence act. In PRAKASH CHAND -vs- STATE (1979 MLJ (CRL) 419, the Supreme Court has held that there is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a police officer in the course of an investigation which is hit by Section 162, Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code, is the statement made to a police officer in the course of investigation and not the evidence relating to the conduct of an accused person when confronted or questioned by a police officer during the course of an investigation. The evidence of the circumstance, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence, were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act. The Supreme Court, while laying down the above proposition, also drew inspiration from an earlier judgment rendered in HIMACHAL PRADESH ADMINISTRATION -vs- OM PRAKASH {A.I.R 1972 S.C. 975}. Therefore, the evidence of P.W.20 that the accused took the police party and pointed P.W.15, though may not attract Section 27 of the Evidence Act, is certainly a piece of evidence, which can be put against him as conduct relevant under Section 8 of the Evidence act. It is no doubt true that P.W.15 turned hostile and the reason is not far to seek. He has purchased the ornaments from A.1, who is involved in a case of murder and therefore, would have been afraid to give evidence in Court supporting the prosecution version. P.W.14, a witness, who attested the mahazar Ex.P.12, has supported the prosecution version. According to P.W.14, the material objects, M.Os.2 to 7 were recovered under a mahazar Ex.P.12, on being produced by P.W.15. P.W.14, being a Village Administrative Officer and being independent, had no reason to implicate A.1 by stating that P.W.15 produced the gold articles, on being pointed out by A.1.

20. It is also to be remembered at this stage that the evidence of a police officer is to be considered and scrutinised like the evidence of any other witnesses and the Court cannot view the evidence of the police officer with suspicion on the ground that he is a person, who wears an uniform and that he is always interested in the success of a case, which he has investigated. The Court should always bear in mind that the police officer is an officer, whose duty is to conduct investigation and detect the crime and criminal, who committed the said crime. Once the evidence of the investigating officer is found to be satisfactory, then his evidence shall not be rejected by the Court merely because he happens to be a police officer. On going through the evidence of P.Ws.14 and 20, we find no material to show that they were entertaining any animosity against A.1 to come out with a false version implicating him in a grave offence of murder. The statement of A.1 in his written statement that his junior paternal uncle has bribed the police officer to file a false case, in our view, can only be an afterthought and

must have been filed on some advice, as he did not have such a case, when he was sent up for remand, though he has stated that he did not inform the Magistrate as he was afraid that his family members will also be implicated in the crime. This statement of the accused in his written statement is also an afterthought, since he had to explain for his conduct of not coming out with this version at the earliest opportunity. The evidence of P.Ws.14 and 20 also show that M.O.1, the navarathna chain, was seized from the person of A.1. It is the case of the prosecution that M.O.1, the Navarathna Chain as well as M.Os.2 to 7 belong to the deceased, as could be seen from the evidence of the witnesses. The accused did not dispute before the trial Court that the gold ornaments did not belong to the deceased nor did he have a case that they belong to him. On the contrary, when he was questioned under Section 313 Cr.P.C., he did not give any explanation. Not only he did not give any explanation, but he did not also give any answer and kept mum to question Nos.38 to 47. It is for the accused to establish as to how he came into possession of the property and the non-explanation by the accused is an additional link in the chain of circumstances, as held by the Supreme Court in the judgment cited supra (DEONANDAN MISHRA -vs- STATE OF BIHAR (A. I.R. 1955 S.C. 801).

21. It will not be out of context for us to mention that the Supreme Court in JOSEPH -vs- STATE OF KERALA (2000 S.C.C. (CRL.) 926) held that the accused alone can explain the incriminating links of facts as they are within his exclusive knowledge and if the accused by his adamant attitude of total denial of everything denies the incriminating circumstances, he is only providing the missing link in the chain of incriminating circumstances. In the case on hand, as we have already observed, the accused not only did not explain as to how he came into possession of the gold ornaments; but also did not give any answer to the questions put to him. Though he attempted to come out with a false theory in his written statement by alleging that he was detained illegally at the police station for about twenty days and the police officer foisted the case after receiving bribe from his junior paternal uncle, the defence put forward by the accused, to say the least, is preposterous and it is difficult and impossible for this Court to digest and accept the said defence theory.

22. The evidence of the witnesses, which we have referred to and the discussion, which we have made above, clearly show that D.1 and D.2 , who were seen alive at about 8.00 or 8.30 p.m. allowed A.1 and another to enter into the house after the door bell was rung and were seen dead by P.W.1 on the next day with injuries on their persons and at that time, the gold ornaments, which D.2 regularly used to wear, were found missing and that the said jewels were later recovered from the person of A.1 (M.O.1) and from P.W.15 (M.Os.2 to 7) under Exs.P.10 and 12 respectively.

23. The evidence, therefore, indicates that the murder and the removal of the jewels form part of the same transaction. The recent and unexplained possession of the stolen property by the accused-person justifies the presumption that it was he, and no one else, has committed the murder and the theft. The question whether a presumption should be drawn under illustration (a) of Section 114 of the Evidence Act is a matter which depends

on the evidence and the circumstances of each case. The nature of the stolen article, the manner of its acquisition by the owner, the nature of the evidence about its identification, the manner in which it was dealt with by the accused, the place and the circumstances of its recovery, the length of the intervening period, the ability or otherwise of the appellant to explain his possession, are factors which have to be taken into consideration in arriving at a decision. After taking into consideration the above facts, if the Court is satisfied that presumption can be raised under illustration (a) of Section 114 of the Evidence Act, it can do so to hold that the recent and unexplained possession of the stolen articles form part of the same transaction and that there is ample justification for reaching the inevitable conclusion that the accused has committed the murder and the theft vide BAIJU -vs- STATE OF MADHYA PRADESH (AIR 1978 SUPREME COURT 522).

24. The contention of the counsel that the statements of the witnesses, P.Ws.8, 10 and 11 were received by the Magistrate only on 5.5.19 99 and therefore, they could not have been examined on 30.10.1998, is not a ground to reject their evidence, in the background of the other incriminating evidence against the accused available on record and the answer given by the police officer that he did not fix the identity of the accused on 30.10.1998, also cannot be a ground to hold that A.1 has not committed the murder, since at best, the above answer of the police officer in the cross-examination only indicates the non-application of the mind of the officer while giving evidence before the trial Court as to the materials available with him. We cannot reject the prosecution version against the accused on the basis of the stray answer given by the officer in view of the overwhelming evidence available against the accused.

25. In the result, the appeal deserves to be dismissed and it is, accordingly, dismissed.

(N.D.J.) (T.V.M.J.)
30.6.2003
Index:Yes
Internet:Yes

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N. DHINAKAR, J
AND
T.V. MASILAMANI, J
To,

1.The I Additional Sessions Judge -cum- Chief Judicial Magistrate, Tiruchirapalli.
2.-do- through the Principal Sessions Judge,

3.The Inspector of Police, Thuraiyur Police Station, Tiruchirapalli District.
4.The Superintendent, Central Prison, Tiruchirapalli.
5.The Collector, Tiruchirapalli.
6.The Director General of Police, Madras.
7.The Public Prosecutor, High Court, Madras.