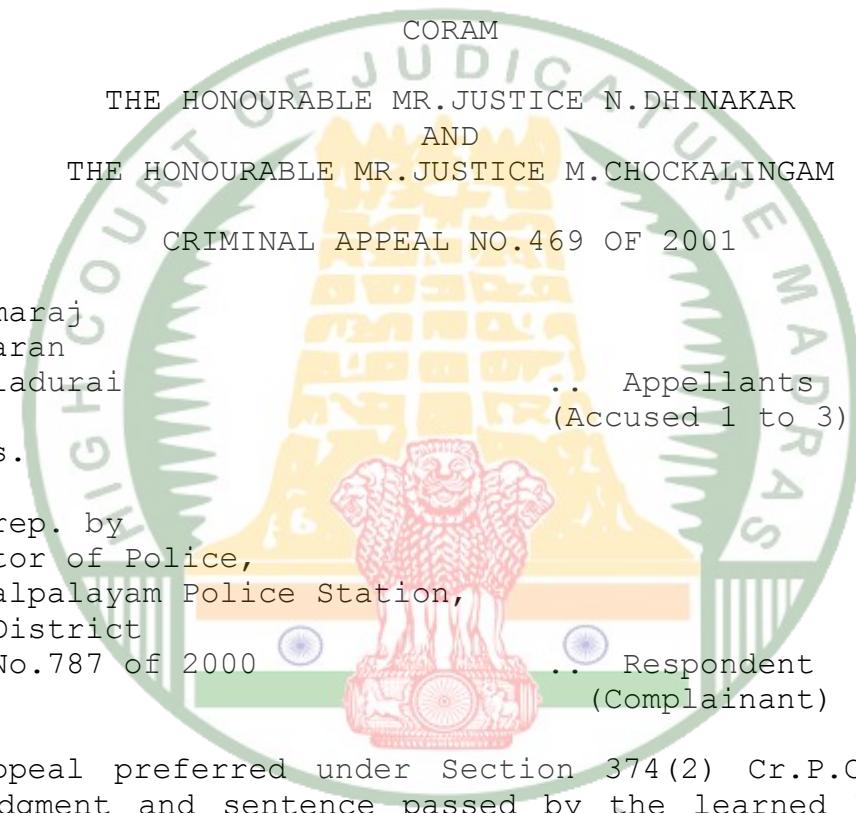


BAIL SLIP

The Appellants (Accused) 1to 3 viz 1.Dharmaraj
2.Baskaran 3.Chekkadurai in CA 469/01 were directed to be
released on Bail by order of this Court dt 27.06.01 and
made in CRL MP 3129/01 in CA 469/2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2005



Appeal preferred under Section 374(2) Cr.P.C against
the judgment and sentence passed by the learned Principal
Sessions Judge, Erode made in S.C.No.40 of 2001, dated
4.4.2001.

For Appellants : Mr.S.Nagamuthu

For Respondent: Mr.S.Jayakumar,
Addl. P.P.

JUDGMENT

(Judgment of the Court was delivered by **M.CHOCKALINGAM, J.**)

The appellants, three in number, have challenged the judgment of the learned Principal Sessions Judge, Erode Division made in S.C.No.40 of 2001, in which they stood charged, tried and found guilty under Section 302 r/w Section 34 IPC and Section 201 IPC. They were sentenced to undergo life imprisonment for the offence under Section 302 r/w Section 34 IPC and for the offence under Section 201 IPC, they were sentenced to undergo one year Rigorous imprisonment and that the sentences were directed to run concurrently.

2.The short facts necessary for the disposal of this appeal can be stated thus:

a)P.W.1 is the father and P.W.2 is the brother of the deceased, Nagaraj. P.Ws.3,7,8, the accused and the deceased were all working in Star Dying Factory at Erode. The accused and the deceased were staying together in a rented house at Vairapalayam. P.W.4 was the employer of the accused and the deceased. P.Ws.5 and 6 were working at Raja Chamber, nearby.

b)The second and the third accused used to borrow money from the deceased, which resulted in a quarrel often. P.W.4 used to intervene and pacify them. The second and the third accused left the company of the deceased and they were living separately. Thereafter, the deceased began to visit their house and demanded money back, which they are unable to pay. Hence, the accused decided to do away with him. In pursuance of their plan, on 28.9.2000, they took the deceased to a Brandy shop of P.W.12 at about 10.00 p.m. Thereafter, they went to a theatre to see a movie. They informed P.W.12 that they are going to see a movie. P.Ws.7 and 8 found the deceased with the company of the accused in the theatre. Afterwards, the accused took the deceased again to a liquor shop and purchased a bottle of liquor and informed the deceased that they can have the company of a lady in the banks of Cauvery and on that pretext, they took the deceased there. They severely beat him and tied him with a stone and thrown the body in the river and the dead body was washed away in the river.

c)P.W.2, the brother of the deceased, could not find his brother for a week and he informed the same to P.W.1, his father. Both of them took 10 persons of their place, came to Erode and searched for the deceased, but they could not. In the meanwhile, P.W.3 informed P.Ws.1 and 2 about

the incident.

d) On 4.10.2000 at about 18.00 hours, P.W.1 went to Karungalpalayam Police station and gave Ex.P.1, complaint and also M.O.1, photo of the deceased. P.W.15, Special Sub Inspector of Police, who was on duty at that time, registered the case, on the strength of Ex.P.1, in Crime No.787 of 2000 under Section 302 IPC. Ex.P.10 is the First Information Report. He immediately sent Exs.P.1 and P.10 to the Court. P.W.16, Inspector of Police, took up investigation on the same day and with the assistance of P.Ws.10 and 11, he made a search for the dead body in the banks of Cauvery, but he could not locate the same.

e) On 5.10.2000 at about 6.00 a.m., he visited the scene of occurrence and prepared Ex.P.4, observation mahazar and drew a rough sketch, Ex.P.11. He examined witnesses and recorded their statements. On 6.10.2000, he examined the other witnesses and recorded their statements. On 7.10.2000 also, he examined the witnesses and recorded their statements. On 9.10.2000, he arrested the first accused in the presence of P.Ws.4 and 9. He volunteered to give a confessional statement, which was recorded, the admissible portion of which is marked as Ex.P.5. Pursuant to the confessional statement, the first accused took them to his house and produced M.O.2, wrist watch, which belonged to the deceased and the same was recovered under a cover of mahazar, Ex.P.6.

f) During further investigation, the Investigating Officer came to know that there was full flow of water in the Cauvery between 29.9.2000 and 10.10.2000 and he has also received Ex.P.7, report, to that effect from the concerned Engineer. On 17.10.2000, P.W.16 came to know about the surrender of the second and the third accused before the Judicial Magistrate No.I, Thanjavur and Judicial Magistrate, Pattukkottai respectively. On application, police custody was ordered and he took both the accused. The confessional statement of A-2 was recorded, the admissible portion of which is marked as Ex.P.8. Pursuant to the confessional statement, he took the police party to the banks of Cauvery and produced a piece of cloth, which is marked as M.O.3 and the same was recovered under a cover of mahazar, Ex.P.9. Both the accused were sent for judicial remand. On completion of investigation, the final report was filed. The case was committed to Court of Sessions and necessary charges were framed.

g) In order to substantiate the charges levelled against the accused, the prosecution marched 16 witnesses

and recorded 11 exhibits and 3 M.Os. The accused were questioned under Section 313 Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused denied them as false. No defence witness was examined. After hearing the arguments of either side, the trial court found all the accused guilty and awarded punishment, as referred to above. Hence, this appeal is filed at the instance of all the accused.

3. The learned counsel appearing for the appellants inter-alia made the following submissions:

In the instant case, the prosecution had no direct evidence to prove the case and therefore, the prosecution relied on circumstantial evidence. The only circumstance relied on by the prosecution was that P.W.8 found the deceased in the company of the accused on 28.9.2000 and they were also found by P.W.12. Insofar as P.W.12 is concerned, he has categorically admitted that he was examined by the police officer on 3.10.2000 itself, but he disclosed the information only on 21.10.2000, and thus, the information alleged to have been given by P.W.12 was nothing, but a subsequent introduction. In the instant case, there was an extra judicial confession, according to the prosecution, alleged to have been given by A-1 on 9.10.2000 itself. But, there is evidence through P.W.1 that he was in the police lockup from 3.10.2000 itself and thus, this would falsify the arrest and the confessional statement alleged to have been given by A-1 on 9.10.2000 and also the recovery of the watch of the deceased. Insofar as A-2 and A-3 are concerned, they surrendered before the Court and police custody was asked for and given. According to the prosecution, the confessional statement of A-2 was recorded and pursuant to the confessional statement, M.O.3, a piece of cloth was recovered. The prosecution has not brought forth any evidence connecting the piece of cloth with the crime and thus, the alleged confessional statement of A-2 was nothing, but made to believe the affairs. Apart from that, in the instant case, the trial court has relied on extraneous circumstances, which have nothing to do with the case. The trial court has taken into consideration the absence of both the accused from the company and this was the reason to connect them with the murder, and apart from that, the surrender of A-2 and A-3 before the lower court was an other circumstance. By no stretch of imagination, it can be stated that the above circumstances are links, connecting the accused with the crime. The trial court failed to consider the above and erroneously found the

appellants guilty. Hence, the judgment of the trial court has got to be set aside.

4. This Court heard the learned Additional Public Prosecutor on the above contentions.

5. In the instant case, the prosecution came out with a specific allegation that the son of P.W.1 and the brother of P.W.2, one Nagaraj was murdered, pursuant to the plan hatched up by A-1 to A-3, following the money transaction between the deceased and A-2 and A-3. In the instant case, the prosecution had no direct evidence and the dead body was also not secured. It is not necessary that in a case of murder, the dead body should be recovered and produced. Even in a case, where the dead body is not recovered, through the attendant circumstances, pointing to the crime, the Court can believe and sustain the conviction. In the instant case, the prosecution had to rely only on circumstantial evidence. It is a well settled proposition of law that when the prosecution rests the case only on circumstantial evidence exclusively, it must prove the circumstances, which constitutes a complete chain and show the hypothesis that it was only the accused and none else has committed the crime.

6. In the instant case, a careful analysis of the evidence available would clearly indicate that the prosecution has neither placed necessary circumstances nor proved the same in order to connect the accused with the crime. The main circumstance relied on by the prosecution, which was accepted by the trial court, was the extra judicial confession alleged to have been given by A-1 on 9.10.2000, pursuant to which he took the police party and produced M.O.2, watch, which belonged to the deceased. P.W.1 has categorically admitted that the first accused was actually in police custody from 3.10.2000 and that his evidence remains unshaken and this would go to show that the first accused was in police lockup from 3.10.2000. Hence, the case of prosecution that A-1 was arrested on 9.10.2000 and he gave a confessional statement and the same was recorded, pursuant to which M.O.2, watch was recovered, has got to be rejected, as evidence introduced to suit the prosecution case.

7. The other circumstance relied on by the prosecution was the evidence of P.W.12. P.W.12 has stated in his evidence that he saw the accused in the company of the deceased on the night of the occurrence. He has categorically admitted that he was examined by the police

officer on 3.10.2000 itself, but he disclosed the information only on 21.10.2000. Had it been true that he saw the accused with the deceased on the night of the occurrence, there was no impediment for him to divulge the same on 3.10.2000 itself, when he was examined by the police officer and thus, the evidence of P.W.12 would clearly indicate that it was a subsequent development in order to make a last seen theory. Thus, the prosecution has not proved any circumstance worth to connect the accused with the crime. The trial court has relied on the absence of both the accused from the company, where they were working, from the date of occurrence, and this cannot be the circumstance, which would suffice to connect the accused with the crime. A-2 and A-3 have surrendered before the lower court, after abscondance. According to the prosecution, A-2 gave a confessional statement, pursuant to which M.O.3, a piece of cloth was recovered and how this piece of cloth will connect the accused with the crime remains unknown. This confessional statement was also an introduction to make strengthen the prosecution case, if possible, but in vain. Under the circumstances, it could be well stated that the prosecution had neither placed necessary circumstances nor proved the same to connect the accused with the crime. The prosecution has miserably failed to prove the case. The trial court has not marshalled the evidence proper, but considered the circumstances, which are irrelevant and came to a wrong conclusion. Hence, the judgment of the trial court has got to be set aside.

8. This criminal appeal is allowed, setting aside the conviction and sentence imposed on the appellants by the trial court. The appellants are acquitted of all the charges levelled against them. The bail bonds executed by them shall stand cancelled.

सत्यमेव जयते

Vvk

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, No.I Erode
2. - do- Thro' the Chief Judicial Magistrate, Erode
3. The Principal Sessions Judge, Erode.
4. The District Collector, Erode District.
5. The Director General of Police, Chennai.
6. The Public Prosecutor, Madras.
7. The Superintendent, Central Prison, Coimbatore.
8. The Inspector of Police, Karungalpalayam Police Station, Erode.

+ one cc to Mr. S. Nagamuthu, Advocate sr 40842

MKJ (CO)
NM (05.10.2005)

C.A.NO.469 OF 2001



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