

Bail Slip

The Appellant/Accused 2 namely Sasi @ Sasikumar 24 Years was directed to be released on bail as per the order of this Court dated 09/08/2017 made in CrI.M.P.No.13531 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 29.10.2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.582 of 2016

Sasi @ Sasikumar .... Appellant/A2

Vs

State represented by  
The Inspector of Police,  
Kodumudi Police Station,  
Erode District.  
Crime No.245/2014,

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to allow the appeal by setting aside the conviction and sentence and fine amount imposed by the learned First Additional District & Sessions Judge, Erode District in Sessions Case No.52 of 2015 vide its judgment dated 29.03.2016 and acquit the appellant from the offence.

For Appellant : Mr.P.Soundararajan

For Respondent : Mr. R.Ravichandran  
Govt. Advocate (CrI.side)

JUDGMENT

The Criminal appeal has been filed against the judgment passed in in S.C.No.52 of 2015 dated 29.03.2016 on the file of I Additional District and Sessions Judge, Erode District at Erode.

2.(i)The accused/A2 in S.C.No.52 of 2015 on the file of the learned First Additional District & Sessions Judge, Erode District is the appellant herein.

(ii) Totally, there are three accused/A1 to A3. The appellant herein is 2nd accused. A2 stood charged for the offence under Section 302 IPC and A1 and A3 stood charged for the offence under Sections 342 and 302 r/w 34 IPC. When they were questioned as to the charges, they pleaded not guilty and therefore, they were put on trial. The learned I Additional Sessions Judge, Erode, after full-fledged trial, found guilty of the offence and convicted A1 to A3 for the offence under Section 304(i) IPC and sentenced them to undergo Rigorous imprisonment for 7 years each and to pay a fine of Rs.5,000/- each, in default, to undergo Simple imprisonment for 6 months each. Challenging the said conviction and sentence, the appellant/A2 is before this Court with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:-

(i) Prior to the date of occurrence, there was a quarrel between the accused and the deceased. On 15.11.2014, at about 8.30 p.m, due to the previous enmity between A1 and the deceased, when the deceased was consuming liquor in the TASMACH Shop, all the three accused with a common intention to murder the deceased, brought the deceased along with them to the turmeric garden situated 12 feet away from Sivasakthi Ware House godown. After reaching the said place, A1 pushed the deceased and made him to fall down in 6 feet pit. Then, A3 sit on the deceased and A1 caught hold of the legs of the deceased and A2 cut the right side of the neck by cutting the vein of the deceased with his knife and made him to succumb due to injury and left the deceased in the turmeric garden. Hence, A2 is charged for the offence under Section 302 IPC and A.1 and A3 are charged for the offences under Sections 342 and 302 r/w 34 IPC. On seeing the dead body of the deceased, P.W.1, Boopathy, gave a complaint on 16.11.2014 to the Special Sub Inspector of Police, Kodumudi Police Station, Kodumudi, P.W.17.

(ii) The Sub Inspector of Police, on receiving such complaint, registered a case in Cr.No.245 of 2014 under Section 302 IPC on 16.11.2014 and handed over the First Information Report to P.W.18, the Inspector of Police, Sulur Police Station.

(iii) P.W.18, on receiving the said FIR, proceeded to the place of occurrence and started investigation. During investigation, he prepared Ex.P.12 Observation Mahazar and Ex.P.24 Rough sketch. In the presence of panchayatars, he also prepared the inquest report Ex.P.25. Thereafter, he sent a requisition to Kodumudi Government Hospital Ex.P.5 to conduct post-mortem of the dead body. Thereafter, he collected the blood stained soil and earth soil for chemical analysis. He recorded the confession statement of A1 and seized the blood stained

clothes. Further, he also recorded the statements of A2 and A3. After completing the investigation, he filed a final report under Sections 342 and 302 IPC r/w 34 IPC before the learned District Munsif cum Judicial Magistrate, Kodumudi.

(iv) The learned District Munsif cum Judicial Magistrate, Kodumudi take cognizance of the case on file as P.R.C.No.3 of 2015 and after the appearance of the accused, furnished the copies of the documents under Section 207 Cr.P.C.

(v) On perusal of records, he committed the case to the learned Principal Sessions Judge, Erode since the offence under Sections 302 and 302 r/w 34 IPC, which has to be exclusively triable by Court of Sessions.

(vi) The Principal Sessions Judge, Erode took the case on file as Sessions Case No.52 of 2015 and after appearance of the parties, made over the same to the learned I Additional District and Sessions Judge, Erode District at Erode, for trial.

(vii) Based on the above materials, the learned I Additional District and Sessions Judge, Erode, after following the procedures, framed the charges. When they were questioned as to the charges, all the accused have pleaded not guilty and therefore, they were put on trial. Before the learned I Additional Sessions Judge, Erode, in order to prove the case of the prosecution, on the side of the prosecution, as many as 18 witnesses were examined as P.W.1 to P.W.18 and 31 documents were marked as Exs.P.1 to P.31. Besides 15 Material Objects were exhibited. On the side of the accused, no witness was examined and no document was marked.

4.(i) Out of the witnesses examined, P.W.1/Boopathy is the uncle of the deceased and he lived with the deceased. According to him, he was working as electrician for the past two months. The deceased told him that due to the previous enmity, A1 Sathish, who is working in Rice Mill, often threatened the deceased by saying that he would cut and kill him. But, P.W.1 has not taken the matter seriously. While so, on 16.11.2014, at about 8.00 a.m., he received the message from Palanichamy, the owner of Sivasakthi Modern Rice Mill that his uncle died with blood injuries near the turmeric garden. Therefore, he went to the turmeric garden. At that time, one Dhandabani, who is working in the TASMACH shop and Murugesan told him that on 15.11.2014, at about 9.30 p.m, he saw that all the three accused viz., Sasikumar, Satheesh Kumar and Murali have taken away the deceased along with them from the TASMACH shop. Moreover P.W.3, Veluchamy also told him that while he was in tea shop, he saw all the three accused have taken away the deceased Natarajan at

Thamaraipalayam - Sivagiri Road. P.W.4 Nagarajan and P.W.5 Rasu, who were working in Palaniandavar Rice Mill have told P.W.1 that all the three accused said to him that they have closed the deceased. Thereafter, he lodged a complaint Ex.P.1 before the Kodmudi Police Station.

(ii)P.W.2, is the then supplier of the TASMAC shop at Thamaraipalayam has stated that he knew all the accused and one month prior to the occurrence, in the TASMAC shop, he saw the deceased Natarajan and Sathish/A1 quarrelled with each other. At that time, the owner of the shop told them not to make noise inside the shop and asked them to go out. While A1 going out of the shop, told the deceased that he would not leave without killing him by knife. On the next day, A1 asked him that whether Natarajan has come, for which, he replied that he has not come. After ten days, one day evening all the three accused asked him that whether Natarajan has come and for the same, he replied that he has not come. For which, A1 told him that, that dog was always escaping. On 15.11.2014, at about 8.30 p.m, while the deceased was consuming alcohol, accused A.1 to A.3 came to the Bar and shouted at Natarajan, for which, he told them not to make noise in the Bar. Then all the three accused brought the said Natarajan outside the TASMAC shop. On 16.11.2014, at about 8.00 or 8.15 a.m., while P.W.2 was going to drink tea at Thamaraipalayam, he heard the message that one male dead body was lying in the turmeric garden. P.W.2 and Thandayuthapani went there and saw the dead body of the deceased and also P.W.1, crying and who narrated the entire incident starting from consumption of alcohol by the deceased at about 8.45 p.m till all the accused have taken away the deceased Natarajan from the shop.

(iii)P.W.3, who is the coconut vendor, has stated that he knew the deceased and the three accused. On 15.11.2014, at about 9.30 p.m, while he was drinking tea in Iyengar Bakery at Sivagiri Road, he saw all the accused have taken the deceased Natarajan, with them. On 16.11.2014, at about 8.00 a.m, while he was going for cutting the coconut, he heard the news that Natarajan died due to the knife injury and according to the said information, he went to the turmeric garden.

(iv)P.W.5, who is the Loadman working in Palaniandavar Rice Mill has stated that P.W.4 and A.1 to A.3 are his colleagues and they are living in the same house line. On 15.11.2014, at about 9.30 p.m, while he was coming to his house after purchasing the vegetables, he saw the three accused and the deceased Natarajan were going inside by parting the fence nearby the turmeric godown, which was locked. While seeing them, he thought that, they were going there for drinking alcohol and he went to his house. At about 10.30 p.m, while he was sleeping in his house, he saw all the three accused were running and he

asked A3 about the blood stained dhoti of A1, A3 replied that they (A1 to A3) finished the deceased Natarajan, who has given trouble to them and he just left it as they have told that under the influence of alcohol. On 16.11.2014, Sunday, at about 6.30 a.m, when he called all the three accused to go for work, he did not find them in their house. Thereafter, at about 8.00 p.m, on receiving the information from the owner of the Rice Mill that one male dead body was found in the turmeric garden, he went there and saw the dead body with knife injury.

(v) P.W.4, who is the Loadman, working in Palaniandavar Rice Mill has deposed that all the three accused were his colleagues. On 15.11.2014, at about 10.30 p.m, while he was lying in the cot before his house, he heard the sound and got up from the cot. At that time, A2, who was running speedily, told that they finished Natarajan, who has given trouble to the uncle. He saw all the three accused were running. He also stated that his house was also in the very same line house. Thereafter, he slept. Next day morning, when he go to work, he had not found all the three accused in their house.

(vi) P.W.6 is the wife of the deceased Natarajan. She told that P.W.1 is living with them. On 16.11.2014, after receiving the message, she went to the turmeric garden along with P.W.1, father-in-law and mother-in-law and saw the dead body of the husband of P.W.6, which is facing prostrating. Thereafter, P.W.1 gave complaint to the police station.

(vii) P.W.7 is the Doctor, working in Government Hospital has stated in his evidence that on 16.11.2014, he conducted post-mortem of the dead body of the deceased Natarajan based on the requisition letter Ex.P.2 given by the Head Constable and found the following external injuries:

"Injury wound of size 8 x 3 x 5 cms.  
(depth) over right side of the neck region  
extending from angle of mandible towards mid  
line of neck. सत्यमेव जयते  
Right common carotid artery punctured and  
clot."

After finishing the post-mortem, he opined that the deceased would have died 24 hours to 48 hours prior to the time of conducting the post-mortem due to injury wound of size 8 x 3 x 5 cms.(depth) over right side of the neck region extending from angle of mandible towards mid line of neck and he issued post-mortem Certificate Ex.P.3.

(viii) P.W.8, who is working in Forensic Science Department has stated that on 28.11.2014, he received the following material objects:

- "(i)Earth etc., on which were dark brown stains.  
(ii)Earth etc.  
(iii)A ragged grey T-shirt with red and white co cross stripes, on which were profuse dark brown stains.  
(iv)A ragged brown jatti, on which were profuse dark brown stains.  
(v)A white dhoti with green border, on which, were profuse dark brown stains.  
(vi)A blue, red and grey checked full sleeved shirt, on which, were dark brown stains.  
(vii)A green lungi with orange and black floral designs.  
(viii)A red full sleeved shirt with black stripes and cross stripes, on which, were dark brown stains.  
(ix)A stainless steel knife red synthetic handle and measuring about 23 cm. in length.  
(x)A black trousers, on which were dark brown stains.  
(xi)A white full sleeved shirt."

Based on the requisition, Ex.P.5 given by the learned Judicial Magistrate, Kodumudi, he sent the samples to chemical analysis.

(ix)P.W.9 is the Doctor, who is having hospital and he has stated that on 16.11.2014, one Sasikumar/A2 got treatment from him for injury sustained in thumb and he gave a receipt Ex.P.11.

(x)P.W.10 is an agriculturist. He has stated that on 16.11.2014, the police, in his presence, prepared observation mahazar, Ex.P.12 for the dead body lying in the turmeric garden and he also signed as 1st witness in the said mahazar. The Inspector of Police also collected blood stained soil and unblood stained soil under seizure magazar Ex.P.13.

(xi)P.W.11, who is the Revenue Divisional Officer, Kodumudi, has stated that on 17.11.2014, at about 9.15 a.m, while he was working as Village Administrative Officer, the accused A.1 to A.3, have come to his office and A.1 has given statement before him and the same was recorded in the presence of his Assistant, Murugesan and he handed over the said statement to P.W.18 Inspector of Police, Kodumudi under his letter Ex.P.14. P.W.18 also enquired A.2 and A.3 and recorded their statements in the presence of him and his Assistant.

(xii)P.W.12, who is owner of the Palaniandavar Rice Mill has stated that the accused A.1 to A.3 and the witnesses Nagarajan and Rasu @ Ramu are working in his Rice Mill and they

are living in the houses, which are situated inside the Rice factory. On 16.11.2014, while he was going to turmeric garden, he saw the male body, prostrated. After identifying that the dead person is Natarajan, he informed P.W.1, Boopathy.

(xiii)P.W.13, who is the owner of the Sivan Computers, on instructions of the Inspector of Police, took photographs of the dead body on 16.11.2014.

(xiv)P.W.14. the II Additional District Munsif, Erode recorded the statements of Murugesan, Thandayuthapani, Veluchamy, Nagarajan, Rasu @ Ramu and sent the same in sealed cover to the Principal Sessions Judge, Erode.

(xv)P.W.15, the Head Constable, Kodumudi Police Station, sent the printed F.I.R to the Special Sub Inspector of Police and also sent the original FIR to the District Munsif cum Judicial Magistrate.

(xvi)P.W.16, the then Head Constable of Kodumudi Police Station, has stated that after finishing the inquest, he handed over the dead body to the Medical Officer, Government Hospital, Kodumudi to conduct post-mortem and he also handed over the blood stained vest, T Shirt, towel and waistband to the Inspector of Police, under Ex.P.22, the Special report.

(xvii)P.W.17, who is the Special Sub Inspector of Police, working in Malayampalayam Police Station, has stated that on 16.11.2014, after receiving the complaint from P.W.1, registered the same in Cr.No.245 of 2014 under Section 302 IPC.

(xviii)P.W.18, Shanmugam, the then Inspector of Police, Kodumudi Police Station has stated that after receiving the First Information Report, he proceeded to the scene of occurrence on 16.11.2014 at about 10.00 a.m and prepared Observation mahazar, Ex.P.12 and Rough Sketch Ex.P.24. Thereafter, he called P.W.13, Thiagarajan for taking photographs of the dead body and collected samples of blood stained earth and earth and he prepared the inquest report Ex.P.25. Thereafter, he sent the dead body for post-mortem. He also recorded the statements of witnesses and also recorded the statement of Doctor Sundaravel, P.W.9, who has given treatment to A2. Thereafter, he recorded the confession statement of A3 and obtained his signature and the signature of witnesses. He also collected the material objects from the accused. Further, he recorded the statements of Murugesan, Thandayuthapani, Veluchamy, Nagarajan and Rasu @ Ramu and also recorded their statements under Section 164 Cr.P.C. Moreover, he recorded the

statement of Velmurugan, Inspector of Forensic Science Department and Venkateswaran, Junior Inspector of Forensic Science Department, Coimbatore. He also recorded the statements of P.W.7, Dr.Saravanakumar, and one Dr.Malarvannan. After completing the investigation, he filed final report under Sections 342 and 302 r/w 34 IPC.

5.When, the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, they did not choose to examine any witnesses nor did they mark any documents on their side.

6.After considering the oral and documentary evidence, the learned I Additional District and Sessions Judge, Erode, after full-fledged trial, found guilty of the offence and convicted A1 to A3 for the offence under Section 304(i) IPC and sentenced them to undergo Rigorous imprisonment for 7 years each and to pay a fine of Rs.5,000/- each, in default, to undergo Simple imprisonment for 6 months each. Challenging the said conviction and sentence, Sasi @ Sasikumar, the appellant/A2 has filed the present Criminal Appeal before this Court. Apart from that, Sathish @ Sathishkumar/A1 filed Criminal Appeal No.319 of 2016 before this Court. Muarali/A3 has not filed any appeal. Criminal Appeal No.319 of 2016 filed by Sathish @ Sathishkumar/A1 will be decided separately.

7.Heard Mr.P.Soundararajan, learned counsel appearing for the appellant and Mr.R.Ravichandran, learned Government Advocate (Criminal side) appearing for the State and perused the records carefully.

8.The submissions made by the learned counsel for the appellant are as follows:

(i)There is no eye witness to prove the case of prosecution and through circumstantial evidence, the prosecution could not prove the case. Under the settled principles of law, when there is no eye witness, motive and last scene theory has to be clearly established without any break of the chain link.

(ii)P.W.1, received the message about the death of the deceased at 8.00 a.m on 16.11.2014, but, the investigation officer came to the place of occurrence only at 10.30 a.m. So, in the meantime, any thing might have happened without the knowledge of P.W.18, the investigating officer. While P.W.18 came to the spot, the dead body was in the stage of prostrating. After turning the dead body, he saw the face of the deceased. Hence, there may be suspicious circumstances.

(iii)Further, P.W.18 collected the material objects and sent the same for Forensic Science Department and he also sent the dead body for post-mortem. P.W.2 in his evidence has stated that

the deceased Natarajan, while consuming alcohol, all the three accused brought him outside the TASMACH shop. But, Ex.P.7, the viscera report shows that the intestine of the deceased does not contain alcohol contents and poison. Hence, according to the evidence of P.W.2, the prosecution did not prove the case beyond reasonable doubt and it creates suspicious circumstances.

(iv) P.W.1, in his evidence has stated that P.W.12 informed him over phone that the dead body of his uncle was lying in the turmeric garden, whereas, P.W.12, in his evidence, has stated that he did not know the phone number of P.W.1. Earlier, P.W.12 has stated that he does not know the deceased and therefore, he could not identify the person. Without knowing the person and the phone number of P.W.1, it is not possible for P.W.12 to inform the death of the deceased to P.W.1. The phone number, by whom it was given to P.W.12, was also not known and the prosecution has not come forward to examine the said person. Therefore, the link is missing. Under such circumstances, the prosecution has not given sufficient reason for not examining the person, who has given phone number to P.W.1 and hence, they failed to link the case without any break.

(v) The medical evidence shows that there is no consumption of alcohol. But, P.W.12 stated that when the deceased was consuming alcohol, all the three accused have taken away the deceased outside of the TASMACH shop. Therefore, the medical evidence has not corroborated the case of prosecution. Though P.W.2, P.W.3, P.W.5 and P.W.4 have seen the accused along with the deceased, they have not seen the accused killed the deceased. Merely on the assumption, he could not support the case of the prosecution. Therefore, the prosecution failed to prove the case beyond any reasonable doubt.

(vi) When there are two views possible, one in favour of the accused and the other in favour of the complainant, the view favouring the accused should be considered.

(vii) Ex.P.12, the observation magazine and the Ex.24, rough sketch did not show any identification about the accused and the death of the deceased.

(viii) The trial Court, failed to consider all these aspects and the motive has not been clearly established and the prosecution failed to prove the last seen theory and erroneously convicted the accused. Hence, the appeal has to be allowed and the conviction and sentence imposed on the appellant has to be set aside.

9. The submissions made by the learned Government Advocate (Criminal side) are as follows:

(i) P.W.1 in his evidence has stated that due to previous enmity, A1/Sathish, who is working in Rice Mill, often threatened the deceased by saying that he would cut and kill him. From the evidence of P.W.1, the motive of the accused has been clearly established.

(ii) (a) P.W.2 in his evidence clearly stated that he knew all the accused one month prior to the occurrence. He further stated that in the TASMAC shop, the deceased Natarajan and Sathish/A1 quarrelled with each other. At that time, the owner of the shop told them not to make noise inside the shop and asked them to go out. While A1 going out of the shop, he told the deceased that he would not leave him without killing him by knife. Next day also, A1 asked him that whether Natarajan has come, for which, he replied that he did not come. After ten days, one day evening all the three accused asked him that whether Natarajan has come and for which, he replied that he did not come. For that, A1 told him that, that dog is always escaping.

(b) P.W.2 further stated that on 15.11.2014, at about 8.30 p.m, while the deceased was consuming alcohol, A.1 to A.3 came to the Bar and shouted at Natarajan, for which, he told them not to make noise in the Bar. Then all the three accused brought Natarajan, the deceased outside the TASMAC shop. On 16.11.2014, at about 8.00 or 8.15 a.m., while he was going to drink tea at Thamaraipalayam, he heard the message that one male dead body was lying in the turmeric garden.

(iii) P.W.3, who is the coconut vendor, has stated in his evidence that he knew the deceased and the three accused. On 15.11.2014, at 9.30 p.m, while he was drinking tea in Iyengar Bakery at Sivagiri Road, he saw the accused have taken the deceased Natarajan, with them. On 16.11.2014, at about 8.00 a.m, while he was going for cutting the coconut, he heard the news that Natarajan died due to the knife injury and according to the said information, he went to the turmeric garden.

(iv) (a) P.W.5 in his evidence has stated that P.W.4 and A.1 to A.3 are his colleagues and they are living in the same house line. On 15.11.2014, at about 9.30 p.m, while he was coming to his house after purchasing the vegetables, he saw the three accused and the deceased Natarajan were going inside by parting the fence nearby the turmeric godown, which was locked. At about 10.30 p.m, also he saw all the three accused were running and he asked A3 about the blood stained dhoti of A1, A3 replied that they (A1 to A3) finished the deceased Natarajan, who has given trouble to them and he just left it as they have told that in the influence of alcohol.

(b) On the next day i.e. on 16.11.2014, Sunday, at about 6.30 a.m., when he called all the three accused to go for work, he has not found them in their house and on receiving the information from the owner of the Rice Mill that one male dead body was found in the turmeric garden, he went there and saw the dead body with knife injury.

(v) P.W.4, also in his evidence stated that he knew all the three accused and they were colleagues of him. On 15.11.2014, at about 10.30 p.m., while he was lying in the bed before his house, he heard the sound and got up from the bed. At that time, A2, who was running speedily, told that they finished Natarajan, who has given trouble to the uncle.

(vi) P.W.7, the Doctor, who is working in Government Hospital, has stated in his evidence that on 16.11.2014, he conducted post-mortem of the body of the deceased Natarajan and he found the external injury that there is a deep injury in the size of 8 x 3 x 5 c.m. on the right hand side of the neck and he also issued post-mortem Certificate Ex.P.3.

(vii) With the above witnesses, the prosecution has proved the chain link theory without any break and also proved the case beyond any reasonable doubt. Hence, there is no merit in the appeal. The learned trial Judge, after conducting elaborate trial, has rightly convicted the accused. Therefore, the appeal has to be dismissed.

10. I have considered the rival submissions made by the learned counsel on either side and also perused the records carefully.

11. On a perusal of records, it is seen that P.W.1/Boopathy, who is the uncle of the deceased, has stated in his evidence that the deceased told him that due to the previous enmity, A1 Sathish, who is working in Rice Mill, often threatened him that he would cut and kill him. Accordingly, on 16.11.2014, at about 8.00 a.m., he received the message from Palanichamy, the owner of Sivasakthi Modern Rice Mill that his uncle died with blood injuries near the turmeric garden.

12. It is seen from the evidence of P.W.2, the then supplier of the TASMACH shop at Thamaraipalayam that one month prior to the occurrence, in the TASMACH shop, the deceased Natarajan and Sathish/A1 quarrelled with each other. At that time, the owner of the shop told them not to make noise inside the shop and asked them to go out. While A1 was going out of the shop, Sathish/A1 told the deceased that he would not leave without

killing him by knife. On the very next day and after ten days, A1 enquired about the deceased and he replied that the deceased did not come and he replied that, that dog was always escaping. On 15.11.2014, at about 8.30 p.m, he saw the deceased was consuming alcohol and at that time, A.1 to A.3 came to the Bar and shouted at deceased, for which, he told them not to make noise in the Bar. Then all the three accused have taken away the deceased Natarajan outside of the TASMAL shop.

13.It is seen from the evidence of P.W.3 that on 15.11.2014, at 9.30 p.m, while he was drinking tea in Iyengar Bakery at Sivagiri Road, he saw that all the accused have taken the deceased Natarajan, with them.

14.It is seen from the evidence of P.W.5 that P.W.4 and A.1 to A.3 are his colleagues and they were living in the same line house. On 15.11.2014, at about 9.30 p.m, while he was coming to his house after purchasing the vegetables, he saw all the three accused and the deceased Natarajan were going inside by parting the fence nearby the turmeric godown, which was locked and at about 10.30 p.m, while he was sleeping in his house, he saw all the three accused were running and while he was asking A3 about the blood stained dhoti of A1, A3 replied that they (A1 to A3) finished the deceased Natarajan, who has given trouble to them.

15.The evidence of P.W.4 reveals that all the three accused were his colleagues. On 15.11.2014, at about 10.30 p.m, while he was lying in the cot before his house, he heard the sound and got up from the cot. At that time, A2, who was running speedily, told that they finished Natarajan, who has given trouble to the uncle. He saw all the three accused were running. He also stated that his house was also in the same line house. Thereafter, he slept. Next day morning, when he go to work, he had not found all the three accused in their house.

16.On the next day morning, the body of the deceased Natarajan was found in the turmeric garden. The post-mortem report also clearly shows that the deceased sustained cut injury in the neck. P.W.1 clearly stated in his evidence about the previous enmity of A.1 and he was informed about the occurrence by P.W.12, who is the owner of the rice mill. P.W.2 also clearly narrated the earlier quarrel between the deceased and the accused and the motive of the accused. From this case, the eye witness of the occurrence is not possible.

17.From the above evidence, it is known that according to P.W.2 on 15.11.2014 all the three accused brought the accused out side of the bar at 8.45 p.m. It is also known that on 15.11.2014 P.W.3 saw all the three accused brought the deceased

at Sivagiri Road at about 9.30 p.m. According to P.W.5, who is the colleague of all the accused, he saw the deceased along with all the three accused, who crossed the turmeric garden gate through fence structure to the turmeric garden situated behind the said godown at about 9.30 p.m and at about 10.30 p.m, while he was sleeping, he saw all the three accused reached their house by running and he asked A3 about the blood stain found in A1's dhoti, A3 replied that all the three of them have finished Natarajan, who has given trouble. According to the evidence of P.W.4, one of the co-workers of the accused that, on 15.11.2014, at about 10.30 p.m, while sleeping in front of his house, A2 conveyed the message that they have finished who quarrelled with the uncle and on the next day morning he did not find all the accused in their house.

18. Therefore, the prosecution has proved the case beyond reasonable doubt and chain link theory has been clearly linked by the evidence of P.W.2, P.W.3, P.W.5 and P.W.4.. Therefore, there is no missing link.

19. Further the prosecution has proved the recovery theory from all the accused of M.O.1 to M.O.9 from the hidden places in furtherance of the disclosure statements of all the three accused to the investigation officer in the presence of P.W.11, Village Administrative Officer.

20. Hence, the submissions made by the learned counsel for the appellant that the prosecution has not proved the motive and last scene theory have been overcome by the prosecution and the prosecution clearly established the case without any break of the chain link beyond the reasonable doubt.

21. The learned trial Judge, convicted the accused A1 to A3 for the offence under Section 304(i) IPC and sentenced to undergo simple imprisonment for 7 years each and also liable to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for 6 months and acquitted A1 and A3 for the offence under Section 342 IPC.

22. The learned trial Judge has not given any specific reasons for not convicting the accused for the offences under Section 342 IPC. The prosecution has not filed any appeal for enhancement of sentence or for acquitting the accused under Section 342 IPC. Therefore, this Court is not inclined to enhance the sentence to the accused without filing any appeal by the complainant or prosecution. Hence, there is no merit in the appeal and there is no reason to interfere with judgment passed by the trial Court.

In the result, the criminal appeal stands dismissed confirming the conviction and Sentence imposed by the Court below by judgment dated 29.03.2016 in S.C.No.52 of 20157 on the file of the First Additional District and Sessions Court, Erode District, Erode. The period of sentence already undergone by the appellant.A2 shall be set off under Section 428 Cr.P.C. Since the appellant/A2 is on bail, the trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence if any.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The First Additional District and Sessions Judge,  
Erode District at Erode.
- 2.The District Munsif Cum Judicial Magistrate,  
Kodumudi.
- 3.The Chief Judicial Magistrate,  
Erode.
- 4.The Inspector of Police,  
Kodumudi Police Station, Erode.
- 5.The Public Prosecutor,  
High Court, Madras.

+2cc to Mr.P.Soundarajan, Advocate Sr.74148

Cr1.A.No.582 of 2016

ks[co]  
srg 28/08/2019