

Subramanian and Another

Vs

The State of Tamil Nadu

Criminal Appeal No. 58 of 1973

(Y. V. Chndrachud, R. S. Sarkaria JJ)

12.11.1974

JUDGMENT

SARKARIA, J. -

1. The appellants were tried by the Sessions Judge, Tirunelveli division for the murder of Muthiah Pillai, an Ex-Member of Parliament and retired Lecturer of a College. Appellant No. 1 (for short, A-1) was convicted under Section 302, read with Section 34, Penal Code, while appellant No. 2 (for short, A-2) was convicted under Section 302, Penal Code. Each of them was sentenced to death. A-1 and A-2 were further convicted for offences under Section 457, 392, Penal Code and sentenced to rigorous imprisonment. The High Court of Madras dismissed their appeals, upheld their conviction and confirmed their sentences. The appellants have now come in appeal to this Court after obtaining special leave under Article 136 of the Constitution.

2. The deceased was a widower. His only child, a daughter, Balmani, was married to Packiam, PW 3, a resident of village Therkumedu. The deceased lived alone in his house in south Car Street, Tirunelveli town. He owned lands in the revenue estates of Kodikulam and Thiruthu, situate at a distance of few miles from Tirunelveli town.

3. A couple of days before his murder, the deceased visited village Kodikulam and directed Arunachala Thevar, PW 4, a cultivator of his lands, to plough his lands in Thiruthu village on the following day. The deceased then departed from village Kodikulam for his home town at about 5 p.m. Accordingly, on the following day, PW 4 and his companion ploughed the lands of the deceased in village Thiruthu. The deceased was expected to come to Thiruthu to supervise the ploughing operations and to pay the wages of the workmen. He however, did not turn up. After doing the day's work, therefore, PW 4 and his companion came to Tirunelveli and reached the house of the deceased at about 7 p.m. They found the entrance door of the house locked. After waiting in vain outside the house for the deceased, they went back to their village at 8 p.m. PW 5, a village Munsiff, also, on that day (April 16, 1971) in the evening, came to the house for collecting Kist in respect of the deceased's lands in Thiruthu village. He also found the front door of the house locked. After a futile wait for the deceased to turn up, he went away at 9 p.m.

4. On April 17, 1971, in the evening, PW 4 again came to the house of the deceased to get wages for the ploughing done by him. He found the house locked as before. This aroused his suspicion. He then went to Perumalpuram and informed one Gomathinayagam, a relation of the deceased, as to how he had found the deceased missing and the hose locked. On being directed by Gomathinayagam, PW 4 reported the matter to PW 3, the son-in-law of the deceased at 11 p.m. on April 17, 1971.

5. On the morning of April 18, 1971, PW 4 and 6 and one Dievu Thevar again came and entered the front room of the house of the deceased after breaking open the lock. Driven back by foul smell they came out, and re-entered in the company of PW 11, the village Munsiff, who was brought there by PW 4. This time they went further into the second room. The entrance door of the third room was lying locked. They broke it open. In the third room lay the dead-body of the deceased wrapped in a carpet and its legs tied with a rope.

6. At the instance of the village Munsiff, PW 4 went to the Police Station along with PW 6 and lodged the report, Ex. P-5, at about 9 a.m. After registering the case, the Sub-Inspector (PW 7) sent a copy of the FIR to the Inspector, PW 28.

7. The Inspector, accompanied by the Sub-Inspector, reached the scene house at 9-45 a.m. and started investigation. He saw the dead-body in the third room, blood on the floor, and marks of dragging over a length of about six feet. He indicated all the facts observed by him at the spot in the mahazar, Ex. P-12. At about 11-30 a.m., he found the Diary, Ex. P-3, of the year 1971. Which the deceased used to maintain, under the pillows on the cot. He took it into possession as per memo, Ex. P-13. He then prepared the inquest report, Ex. P-14, and examined PWs 3, 4, 6 and the daughter of the deceased. At 6 p.m. he detected a blood-stained towel secreted in a pitcher in the fourth room. He then found another diary, Ex. P-2, of the deceased relating to the year 1970, on the wooden bureau. He examined the entries in the diaries, from which he came to know that the deceased had association with 36 persons mentioned therein. One of them was A-1 with whom the deceased had an intimate connection. The Investigating Officer then searched for A-1 but found him absconding. He called and examined 11 out of those 36 persons mentioned in the diaries.

8. The post-mortem examination of the corpse was performed by Dr. Natarajan on April 18, 1971. There were multiple stab wounds on the body. Injuries Nos. 1 and 2 were located on the left and right side of the chest, and the rest on the abdomen and stomach. The coils of intestines were protruding out of injury No. 7 Injuries Nos. 2 to 7 were individually and cumulatively sufficient to cause death in the ordinary course of nature. The injuries, in the doctor's opinion, could have been caused with a knife at about midnight on April 15, 1971.

9. A-1 was, sometime before the occurrence, working as a servant in the house of the deceased. During that period, he stole away several articles on various occasions. When the deceased discovered it, he got executed in his favour, a promissory note (P-24) in the sum of Rs. 1,000 by A-1, towards the value of the stolen property.

10. The deceased used to keep his cash in the big iron safe which was lying in the scene room. He used to wear two gold rings, MO 5 and MO 6, and the wrist watch, MO 7. These were found missing from the dead-body at the time of its recovery.

11. The prosecution case further is that about two days after the murder on April 17, 1971, A-1 pledged the ring, MO 5, with PW 12 for Rs. 30.

12. A-1 was arrested by PW 27, at the bus stop near Rastha village on May 2, 1971. After making a confessional statement, A-1, whilst in custody, led PW 27, in the presence of PW 13, to the house of PW 12, Questioned by PW 27, PW 12 produced the ring, MO 5, which was seized by the Sub-Inspector as per Ex. P-21. On the same day, in pursuance of the confessional statement, which he had made earlier A-1 took the Sub-Inspector, in the presence of PW 13, to the backyard of the house of the deceased and produced from a thatched roof the bunch of keys, MO 4. It was attached as per

Ex. P-22. A-1 was then taken to the Police Station where the dhoti, MO 11, was removed from his person as per Memo Ex. P-23.

13. The big and small safes in the scene room were opened on May 3, 1971 at 11 a.m. with the aid of the keys in the bunch (MO 4) in the presence of PWs 3, 11 and 21. PW 21, the Superintendent of Finger Print Bureau, found finger and palm prints on the inside of the door of the big iron safe. These prints were photographed. The promissory note Ex. P-24, was lying in the safe. It was taken into possession by the Investigator.

14. On May 13, 1971, PW 27 arrested Narayanan, a part-time servant of the deceased, at village Vadukatachimatel. Narayanan made a confessional statement which was recorded. This information led to the recovery of the wrist watch, MO 7, of the deceased, from PW 16 with whom Narayanan had pawned it for Rs. 30 on April 18, 1971. Narayanan then caused the recovery of the fan, MO 2, from PW 15 to whom he had sold it on March 25, 1971.

15. A-2 was arrested by PW 27 on May 22, 1971 from Koilpatti bus stand in the presence of PW 26. The knife, MO 3, was seized from his person. A-2 made the confessional statement Ex. P-44. He then led the police to the recovery of the ring, MO 6, from PW 19. Pursuant to the same statement, A-2 led to the recovery of Rs. 500 in currency notes from PW 18.

16. On May 14, 1971, the Police Sub-Inspector moved the Sub-Magistrate, Nanguneri, PW 9, for recording the confession of Narayanan who was then in jail. Narayanan was sent for by the Magistrate from jail on May 18, 1971. After preliminary examination, the Magistrate sent him to the Sub-jail for reflection. Thereafter, on May 19, 1971, the Magistrate recorded his confession, Ex. P-9. On August 17, 1971, the Executive Magistrate First Class, Tirunelveli tendered pardon to Narayanan under Section 337, Cr. P.C., 1898.

17. The conviction of the appellants rests on the testimony of the approver, PW 1, corroborated by other evidence, mostly circumstantial.

18. The story narrated by the approver at the trial, was, as follows.

19. A-1, A-2 and the approver are all residence of Tirunelveli town and were known to each other. The services of A-1, as domestic servant, were dispensed with by the deceased about six months before the occurrence because A-1 had been stealing articles from the house of the deceased. About three months before the occurrence, the approver became a casual servant of the deceased on an ad hoc basis. Even after the termination of his employment, A-1 continued to visit the house of the deceased. About three months before this murder, the approver stole away a tablefan from the house of the deceased and sold it to Khaja Barji for Rs. 80 at Pettai. The deceased suspected that the theft had been committed again by A-1. A week before his murder, the deceased told the approver that A-1 had stolen the fan, and therefore he was going to lodge a complaint with the police. The deceased added that he would also file a case against A-1 on the foot of the promissory note for Rs. 1,000. The approver passed on this information to A-1 on April 15, 1971, as he was afraid that initiation of proceedings before the police would expose him as the thief. He further informed A-1 that the deceased had in his house the sale proceeds of 25 Kothahs (50 bags) of paddy. They, therefore, made a plan to murder the deceased on the same night and rob him of the cash and valuables. Accordingly, at 7-15 p.m., A-1 and A-2 joined the approver at a distance of one furlong from the house of the deceased. Perumalsami Naidu, PW 2, a passer-by saw them conferring there. All the three then went to the house of the deceased and watched the deceased who was then engrossed in

reading a newspaper. A-1 and the approver knew that according to his routine, the deceased would soon go out to take his dinner. After about 15 minutes, the deceased went inside the house, placed the newspaper near the Kali Pooja room and proceeded further to the well inside for a wash. The approver stealthily followed the deceased into the house and concealed himself behind a bureau. After washing his hands and legs, the deceased went out locking the front door of the house. About 15 minutes thereafter, the approver, as per prior understanding, opened the back door of the house by the side of the well, and let A-1 and A-2 into the house. All the three then hid themselves behind the three big bureaus in the bed room. At about 9-30 p.m., the deceased re-entered the house after unlocking the front door. He relcoked that door from inside, came into the bed room, spread the bed-sheet on the floor near the cot and went to sleep. At about midnight when the deceased was snoring loudly, A-1 asked his companions to come out and finish the "job". A-2 then instructed that A-1 should switch on the light and gag the deceased, while the approver would hold the legs of the deceased and A-2 do the rest. Accordingly, A-1 put on the light. The deceased woke up. A-1 immediately covered his face with a piece of cloth. The approver pinned the legs of the deceased to the floor, while A-2 pulled out the knife, MO 3, from his belt and stabbed the deceased seven or eight times on the chest and stomach. After about five minutes, the deceased became still. A-2 then removed the blood-stained dhoti, the bunch of keys MO 4 and the gold rings, MO 5 and MO 6, from the body of the deceased. The wrist watch, MO 7, of the deceased was lying on the radio. A-2 removed this watch, also. A-2 then wrapped the dead-body with the carpet, MO 8, and tied its hands and feet with a rope. A-1 placed a towel on the mouth of the deceased. Then all the three dragged the corpse to the southern corner of the room and left it there. A-1 then opened the big iron-safe and took out three bundles of currency notes and passed them on to A-2 who put them in a white cloth bag. A-1 closed the safe and retained the key with him. A-1 and A-2 took the blood-stained dhoti of the deceased and the currency notes and went towards the side of the well. After washing themselves at the well they came back into the bed room and changed their own dhoties with those of the deceased, kept for drying near the pooja room. A-1 then opened the front door of the house. A-2 first went out. Next did the approver. A-1 locked the interior doors of the house. He came out last and locked the front door. All the three, as previously agreed, then met for sharing the booty behind the Santhipallaiyar Temple at a distance of one furlong from the house of occurrence. A-2 gave a few currency notes to A-1, who demanded more. A-2 thereupon gave the gold ring, MO 5, to A-1. Similarly, when the approver expressed dissatisfaction at the amount of the money given to him, A-2 gave the watch, MO 7, to him. They then dispersed.

20. The approver further stated how he had pledged the watch with Srirangam PW and how he had after his arrest, got it recovered. He also stated that he had made the confession before the Sub-Magistrate.

21. There are concurrent findings of the courts below that the approver is reliable, and that his testimony has been sufficiently corroborated by the other evidence qua each of the appellants.

22. We have heard the arguments of Sarvashri Vanamamalai and R. K. Garg, learned Counsel for A-1 and A-2, respectively. Their main contention is two-fold : that, in the first place, the testimony of the approver was inherently unreliable; secondly, the evidence produced to corroborate it, was neither sufficient nor cogent enough to connect the appellants with the murder.

23. We have reproduced earlier the substance of the evidence of the approver. We have also gone through his statements on record. Barring inconsequential variations, the substratum of his evidence has throughout been consistent. We do not think that his testimony, in the main, is unreliable, or inherently improbable. The discrepancies or inconsistencies in his statements pointed out by the

learned Counsel were duly considered by the courts below. It was found that they were no grounds to reject the testimony of the approver. There is no good reason for us to take a different view.

24. This takes us to the question, whether the evidence of the approver was adequately corroborated by independent evidence qua the appellants.

25. We will first take up the case of A-1.

26. The main items of evidence which have been adduced by the prosecution to corroborate the approver may be catalogued as under :

(1) Presence of finger and palm prints inside the door of the iron-safe which, according to Finger-Print Expert, were of A-1;

(2) Seizure of dhoti, MO 11, belonging to the deceased, from the person of A-1 son after his arrest by the police on May 2, 1971;

(3) Two days after the murder, A-1 sold gold-ring, MO 5, of the deceased, to PW 12, and after his arrest, caused its recovery from PW 12;

(4) Recovery of the bunch of keys, MO 4, at the instance of A-1 from the thatch in the backyard of the deceased.

27. Evidence with regard to item No. (1) was given by PW 21, Superintendent of Finger Print Bureau, and PW 22, a photographer. The trial Court accepted that evidence and held that the palm print found on the big iron-safe was proved to be that of A-1. The High Court has reproduced the evidence of PW 21 but has not discussed it, possibly because the learned Counsel for the State did not stake any argument on it. No useful purpose will therefore be served by burdening this judgment with a discussion of that evidence.

28. Regarding item No. (2), there is the unanimous finding of the courts below that the dhoti (MO 11) was seized from the person of A-1 by PW 27 as per memo Ex. P-23 on May 2, 1971 soon after his arrest, and that this dhoti (MO 11) was proved to be that of the deceased because it bore the dhobi mark 29. In this connection, reliance was placed on the evidence of the dhoti, PW 8. We are not persuaded to disturb that concurrent finding of fact. This circumstance furnishes useful corroboration of the testimony of the approver in regard to the complicity of A-1 in the crime.

29. As regards item No. (3), it is noteworthy that this bunch of keys was produced by A-1 from the thatch in the backyard of the deceased on May 2, 1971.

30. This evidence, which was not discussed by the Sessions Judge, has been considered by the High Court in these terms :

PW 1 stated in his evidence that the first appellant told him that he threw away the key of the big iron-safe at the backyard when he went there for washing his hands at the well and he (the first appellant) took with him the bunch of keys, MO 4 series and the key of the outer door lock. PW 1 also stated that the second appellant after the commission of the offence took MO 4 series from the waistcord of Muthiah Pillai, and he (PW 1) also stated that those keys were the keys for the drawers in the big iron safe. PW 27 stated that the first appellant took him to the house of Muthiah Pillai and from the stacked thatch, he produced MO 4 series which he received under Exhibit P-22. In cross-

examination, PW 27, stated that after the seizure of MO 4 series, he did not put the keys on the iron safe to find out whether they really suit it. He also stated that he did not ask the first appellant to open the iron safes and that he himself opened the two safes. After the seizure of MO 4 series, he took the first appellant to the police station and asked him as to how it could be opened and that the first appellant told him how the iron safe could be opened. He thereafter opened the iron safe. In Exhibit P-9, PW 1 stated that when he asked the first appellant as to where the key of the iron safe was, he told him that while he was washing his hands, he threw away the same at the backyard.

31. It was contended before the High Court and that argument has been repeated before us - that if the key had been thrown, as the approver has deposed, by A-1 at the backyard, then it was not explained how that key together with others in the bunch, MO 4, could be recovered from the thatch at the instance of A-1. The High Court tried to meet this argument thus :

We are unable to see how the evidence relating to the first appellant throwing away the key of the iron safe is inconsistent with the possible existence of another key in MO 4 series to suit or open the iron safe. It has not been suggested either to PW 1 or to PW 27 that a duplicate key for the big iron safe was not available in MO 4 series, and that a separate key for the purpose of opening the big iron safe has been introduced by the Sub-Inspector of Police, PW 27, in the bunch of keys, MO 4 series.

32. This finding, it is manifest, does not rest on terra firma. To prop it, the learned judges had to resort to conjecture. There was no evidence on the record to show that A-1 had a duplicate key of the iron safe, apart from the one found in the bunch MO 4. This evident gap in the prosecution evidence could not be filled by surmise, howsoever plausible. We therefore, think it unsafe to rely on this piece of evidence.

33. Item No. 4 is the most telling circumstance that unerringly connects A-1 with the commission of the crime in question. The concurrent findings of the courts below are :

(a) That the gold rings MO 5 and MO 6, belong to the deceased who used to wear them and that these rings were found missing from his corpse at the time of its recovery. (On this point, the courts have inter alia relied upon the evidence of PWs 3, 5 and 7).

(b) That on April 17, 1971 at about 9 a.m., A-1 pleaded this gold ring (MO 5) with PW 12 for Rs. 30, and later, on May 2, 1971, it was recovered by the Police Sub-Inspector (PW 27) in the presence of PW 13, from PW 12, pursuant to the information and the lead given by A-1.

34. The courts below have found the evidence of PWs 12, 13 and 27 with regard to the recovery of this ring fully trustworthy. It has not been shown that the evaluation of this evidence made by the High Court suffers from any gross error or material flaw which would necessitate its re-appraisal by this Court.

35. It was argued that the investigation in this case was dishonest; that the evidence with regard to the finger-prints on the iron-safe, the recovery of bunch of keys and the date of the arrest of A-1, had been fabricated, and the consequently, the courts should have, as a matter of prudence, held the entire prosecution evidence to be suspect. Reference was also made to certain newspapers reports published on April 22, 1971 and April 24, 1971 to show that A-1 had been arrested on April 23,

1971 and that the iron safe was opened by the police with the key on April 22, 1971.

36. We see no merit in this contention. There was no ground to hold that the prosecution evidence with regard to the finger-prints or the recovery of the bunch of keys or that relating to the date or arrest of A-1 and opening of the iron safe by the police, was false and fabricated. It was not suggested to the Investigating Officer (PW 27) that these gold-rings, MO 5 and MO 6, did not belong to the deceased. On the contrary, the trend of cross-examination of PW 12 shows that it was accepted as a fact that this gold-ring (MO 5), on which the first initial of the deceased has been engraved, belonged to the deceased. It was suggested to the witness that this inscription should have put him on inquiry as to its ownership.

37. Be that as it may, the courts below have accepted the evidence of these recoveries. The trial Court found PWs 21 and 22 worthy of credence and held that the palm-print found on the iron safe was of A-1. The High Court also took notice of that evidence, though without comment as to its reliability or otherwise. Nor did the High Court hold that the evidence relating to the recovery of the bunch of keys at the instance of A-1, was unreliable. Rather, it found this evidence worthy of credit. We have chosen not to act on that evidence, only as a matter of abundant caution. The only infirmity in the appraisal of that evidence by the High Court, was that a missing link was sought to be supplied by an inference on speculative premises. This conjecture drawn by the High Court was not altogether implausible in view of the entries in the diary of the deceased that A-1 had on previous occasions, also, stolen the keys of the iron safe. This entry was among those which were relied upon by A-1.

38. The newspaper reports were rightly ruled out by the trial Court. The reporters concerned were not examined, nor was the source of the information disclosed. The trial Court believed the testimony of PW 27 and PW 28, that what was opened on April 22, 1971 was not the iron safe in the scene room but the iron bureau kept in the fourth room behind the scene room. According to these witnesses, the iron safe in the scene room was opened on May 3, 1971, the day following the arrest of A-1 and the recovery of the bunch of keys at his instance. Thus, there was no foundation for the argument that the investigation in this case was conducted in a dishonest manner.

39. Approver had stated how after the murder, the two gold rings, including MO 5, were removed by A-2 from the corpse of the deceased and how thereafter MO 5 was given by A-2 to A-1, as the latter's share of the booty. On this vital point, the evidence of the approver stood cogently corroborated by the evidence item No. 4.

40. Furthermore, there was general corroboration of the approver in regard to the motive and the occasion for committing the crime. Two diaries, Ex. P-2 and P-3, in the hands of the deceased, were tendered in evidence. Extracts from these diaries were relied upon by A-1 in his written statement. These diaries contain tell-tale entries. They support the prosecution story that A-1 was not only a domestic servant of the deceased but also had homo-sexual relation with him. A-1 exploited this weakness of the deceased, and frequently stole away cash and other articles from his house. Evidently for fear of exposure, the deceased felt helpless and miserable and suffered in silence the pecuniary losses and indignities inflicted by A-1. There is an entry of November 11, 1970 showing that Subramanian (A-1) left the service of the deceased on that day. Murder was committed about five months and five days after that date.

41. The subsequent entries in the diaries show that A-1 continued to visit covertly or overtly the house of the deceased. Entries dated, March 9, 1971 and March 29, 1971, in the diary, Ex. P-3,

speak of Narayanan (approver). They show that the approver also became a confidant of the deceased sometime after A-1 had left the service of the deceased. These entries lend assurance to the evidence of the approver, and that of PW 3 in regard to the fact that PW 1 was a casual servant or the "errand boy" as the learned Judge describes him, of the deceased.

42. The promissory note, dated August 25, 1969, for Rs. 1,000 executed by A-1 in favour of the deceased was another item of evidence that confirmed the testimony of the approver qua A-1. PW 14 not only proved the execution of this note but also the fact that the deceased had got it executed in consideration of the value of the articles stolen by A-1.

43. It is in the evidence of PW 7 that some weeks before the occurrence, the deceased had received 75 kothahs of paddy from the cultivators of his lands. He sold that paddy at the rate of Rs. 75 per Kothah in Thiruthu village and personally collected the sale proceeds. The approver informed A-1 about the presence of these sale proceeds in the iron safe of the deceased. He further told A-1 how the deceased had threatened civil and criminal action against A-1. Entry, dated March 29, 1971, in the diary, Ex. P-3 indicates that the deceased suspected the hand of A-1 in the theft of his table-fan. The approver himself was afraid if the theft of the fan was reported to the police, he (approver) would also be in trouble. Thus, A-1 and PW 1, both had a motive to do away with the deceased and to rob his valuables.

44. There is still another circumstance which lends support to the evidence of the approver. After the murder, A-1 took to the currency notes from the iron safe and passed them on to A-2 who subsequently gave a few of them to A-1 and PW 1 retaining the most of them with him. As concurrently found by the courts below, A-2 had, in the beginning of April 1971, borrowed Rs. 500 from Perumal Kohar (PW 18) of village Kovilpatti; and some days after the murder, A-2 though a person of humble means, was able to return that loan in full in the shape of 50 currency notes of the denomination of Rs. 10 each. After his arrest, A-2 got those very currency notes recovered from PW 18. The courts below found that PW 18 was an independent and reliable witness. We have no reason to differ from that conclusion. This circumstance, though not of a conclusive tendency, does lend assurance to the evidence of the approver in regard to the theft of these currency notes.

45. The most important piece of corroborative evidence qua A-2, also, was. The circumstances of the recovery of the gold ring (MO 6), from PW 18 pursuant to the information supplied by A-2. That this gold ring belonged to the deceased and had been found missing from his dad body, stood fully established on the record. The testimony of PW 19 was to the effect that A-2, who was previously known to him, pledged the ring (MO 6) with the witness for Rs. 50 about 20 days after the murder of the deceased. Thereafter on May 22, 1971, A-2 led the Police Sub-Inspector to the house of the witness. PW 19 then handed over the ring, MO 6, the Sub-Inspector.

46. In the light of what has been said above, it is clear that the evidence of the approver had been adequately corroborated from independent sources against both the appellants. They were therefore rightly convicted of the murder of the deceased and allied charges.

47. Now remains the question of sentence. Undoubtedly, the murder was committed in a ghastly manner, and, but for the reason to be stated shortly, the capital sentence would not be inappropriate. But we cannot be oblivious of the tendency to minimise one's own part and to shift and assign the dominant role in the commission of the offence to the accused, that is inherent in the evidence of all accomplices. In the present case, also, the approver's testimony cannot be said to be absolutely free from such tendency. Nor has its corroboration, - although reliable and adequate enough to make it

safe for sustaining the convictions - completely exercised it of that disposition, there being a common motive for the approver and A-1 to murder the deceased. On the facts of the case, therefore, the lesser penalty prescribed by law for the offence of murder would meet the ends of justice. Accordingly, on the capital count, we could commute the death sentence of each of the appellants to that of imprisonment for life.

48. In the result, the appeal stands dismissed except to the extent indicated above.

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