

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2017

PRONOUNCED ON: 14.12.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Criminal Appeal No.763 of 2013

Arokiyaraj

Appellant

vs.

The State
represented by
the Inspector of Police
Karaikal Town Police Station
Karaikal
Pudhucherry Union Territory
(Cr. No. 75 of 2010)

Respondent

Criminal Appeal filed under Section 374 (2) Cr.P.C. seeking to set aside the judgment dated 04.10.2013 passed by the Additional Sessions Judge, Karaikal in S.C. No. 35 of 2013.

For appellant Ms. Greetha Senthil Kumar

For respondent Mr. M.R. Thangavel
Addl. Public Prosecutor, Pondicherry

JUDGMENT

This Criminal Appeal has been preferred seeking to set aside the judgment dated 04.10.2013 passed by the Additional Sessions Judge, Karaikal in S.C. No. 35 of 2013.

2 The case of the prosecution in a nutshell is as under:

2.1 The deceased Sundar is the cousin of Susindran (P.W.1) and they were admittedly glass-mates. They were frequent visitors to Ellora Bar, where, they got acquainted with the accused. The accused would request the deceased to get him liquor and on some occasions, the deceased would oblige.

2.2 While so, on 14.03.2010, around 2.30 p.m., Susindran (P.W.1) and the deceased went to Ellora Bar by motorbike, where, the accused was also available. On seeing them, the accused started requesting the deceased to get him drinks. When the deceased refused to oblige, the accused is said to have slapped the deceased at the entrance of Ellora Bar and in retaliation, the deceased punched him. The accused fell on the showcase in the bar and it broke. The accused is said to have taken a broken glass (M.O.10) and stabbed the deceased on his left chest and caused injury. The deceased was rushed to the General Hospital, Karaikal, where, he was declared brought dead and therefore, the body was kept in the mortuary for further action.

2.3 On the complaint (Ex.P.1) lodged by Susindran (P.W.1), Shanmugam (P.W.16), Sub Inspector of Police registered a case in Cr. No.75 of 2010 under Section 302 IPC and prepared the FIR (Ex.P.22). The investigation of the case was taken over by Raja Shankar (P.W.17), Inspector of Police, who

went to the place of occurrence with Murugesan (P.W.12), Police Photographer and took photographs (Ex.P.11) at the place of occurrence. He prepared the Observation Mahazar (Ex.P.2) and rough sketch (Ex.P.3) in the presence of Sukumar (P.W.2), a Supplier in Ellora Bar.

2.4 From the place of occurrence, Raja Shankar (P.W.17), Inspector of Police, seized a Splendor Plus motorbike (M.O.1), a TVS Champ (M.O.2), glass pieces (M.O.3), blood-stained soil (M.O.4) and soil without blood stain (M.O.5) under the cover of mahazar (Ex.P.4).

2.5 On the midnight of 15.03.2010 at 00.15 hrs., the police arrested the accused and produced him before the duty doctor at the Government Hospital, Karaikal, for medical examination. Dr. Jane Allen Christa examined the accused and issued the Wound Certificate (Ex.P.16), wherein, she has noted the following injuries:

1. *Contusion on the RT eye*
2. *Injury on the lips*

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2.6 After obtaining the Wound Certificate, the accused was interrogated and his confession statement was recorded. The accused took the police party to his residence and on the disclosure made by him, a long glass piece (M.O.10), blood-stained shirt of the accused (M.O.11) and dhoti of the accused (M.O.12) were seized under the cover of mahazar (Ex.P.10) in the

presence of V. Ganesh (P.W.10). Thereafter, the Investigating Officer conducted inquest on the body of the deceased at the Government Hospital and gave a requisition for post-mortem. Dr. Narasimha Murthy (P.W.15) conducted autopsy on the body of the deceased and in his evidence as well in the post-mortem report (Ex.P.21), he has noted the following injuries:

"A spindle shaped stab injury 2.5 x 1.5 cms. x thoracic cavity deep seen on left chest just above and media to the nipple 8 cms. lateral to midsternal line at the level of fifth intercostal space, clean cut margins.

Abrasion 2 x 1 cms. on left knee

Abrasion 2 x 1 cms. on right knee

All lesions are fresh and ante-mortem in nature"

After receiving the viscera report (Ex.P.20), he has opined that the death is due to hypovolaemic shock as a result of cardiac rupture.

2.7 The Investigation Officer collected the blood-stained dhoti (M.O.6), blood-stained shirt (M.O.7), sleeveless banian (M.O.8) and underwear (M.O.9) that were worn by the deceased under the cover of mahazar (Ex.P.5). The blood sample of the deceased and the accused were collected. The blood-stained clothes of the accused and the deceased and their blood samples were sent through the Court on 19.03.2010 to the Central Forensic Science Laboratory, Hyderabad, where, all the articles were examined by a Senior Scientific Officer, who, in his report (Ex.P.27), has stated that the source of the blood stains found in the long broken glass (M.O.10), dhoti of the accused

(M.O.12), dhoti worn by the deceased (M.O.6), shirt of the deceased (M.O.7), banian of the deceased (M.O.8) and underwear worn by the deceased (M.O.9) is that of the deceased Sundar.

2.8 Raja Shankar (P.W.17), Inspector of Police, examined some witnesses, including the doctor who conducted the post-mortem and others and completed the investigation and filed the final report against the accused under Section 302 IPC in P.R.C. No.5 of 2013 before the Judicial Magistrate No.II, Karaikal.

2.9 On the appearance of the accused, he was furnished with the copies of the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C. No.35 of 2013 and was made over to the Additional Sessions Court, Karaikal, where, a charge under Section 302 IPC was framed against the accused. When the accused was questioned, he pleaded not guilty.

2.10 In order to prove the case, the prosecution examined 17 witnesses and marked 27 exhibits and 16 Material Objects. No witness was examined nor any document marked on behalf of the accused. When the accused was questioned about the incriminating circumstances appearing against him under Section 313 Cr.P.C, he submitted a written explanation, wherein, he has stated that:

- he does not know the accused at all;
- he had never been to Ellora Bar;
- On 14.03.2010, around 3 p.m., while he was walking on the road, a person from Ellora Bar was creating ruckus in the road and when he was passing by, he heard that person abusing him;
- the said person punched him on his eye and lips; and
- when he wanted to escape from him, that person fell on the showcase of Ellora Bar and sustained injuries

2.11 The Trial Court, after considering the evidence on record and hearing the learned counsel on either side, by judgment dated 04.10.2013 in S.C.No.35 of 2013, acquitted the accused of the charge under Section 302 IPC, but, convicted him for the offence under Section 304 (II) IPC and sentenced him to undergo four years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment, challenging which, the accused is before this Court.

3 Heard Mrs. Greetha Senthil Kumar and Mr. M.R. Thangavel, learned Additional Public Prosecutor (Pondicherry) appearing for the respondent-State.

4 The learned counsel for the accused submitted that:

- there are contradictions in the testimony of the eye-witnesses, viz., Susindran (P.W.1), Sukumar (P.W.2), Saravanan (P.W.3) and Senthil Kumar @ Kattabomman (P.W.5);
- that the police had failed to recover the blood-stained clothes of Susindran (P.W.1);
- Susindran (P.W.1), in his cross-examination, has stated that when he sat on the bike, he heard a noise and then only, he turned the bike, but, by then, the incident had taken place and therefore, Susindran (P.W.1) could not have seen the incident;
- that had the accused stabbed the deceased with a broken glass piece, he would have sustained injuries in his hand and in the absence of any injury in the hand of the accused, the prosecution case stands falsified;
- that Sukumar (P.W.2) could not have seen the accused coming by motorbike, because, admittedly, he was a Supplier in Ellora Bar and therefore, he could not have seen the vehicle in which the accused is said to have come.
- Saravanan (P.W.3) has stated that the showcase glass was completely broken, whereas, the photographs show that it has not been completely broken;

- In the seizure mahazar and rough sketch, the police have shown two places, where, there were blood stains on the ground and therefore, the contention of the police that the incident had taken place near Ellora Bar appears improbable.

5 The learned Additional Public Prosecutor (Pondicherry) refuted the contentions put forth by the learned counsel for the accused.

6 Susindran (P.W.1), in his evidence, has stated that he went with the deceased on 14.03.2010 to Ellora Bar around 2.30 p.m. and they both consumed liquor; at that time, the accused approached the deceased and was asking him to get him liquor; the deceased was speaking over his mobile phone, but, the accused was intermittently disturbing the deceased; the deceased, in a fret of anger, told the accused that he will not get him liquor and that if he wants money, he can be a pimp for his wife and buy liquor from the money earned through such an act; the Salesman in Ellora Bar asked the accused and Susindran (P.W.1) to go out of the Bar and when they were walking out of the Bar, the accused slapped the deceased; in retaliation, the deceased punched the accused, on account of which, the accused fell on the showcase resulting in breakage of the showcase; the accused took the broken glass piece and stabbed the deceased resulting in the deceased sustaining injuries; the deceased was immediately taken to the hospital, where, he was declared brought dead; thereafter, Susindran (P.W.1) gave a complaint, based on which, the case was registered and further investigation was taken up.

7 The learned counsel for the accused contended that in the evidence of Susindran (P.W.1), he has stated that he was sitting on the bike and by the time he turned the bike, the incident had already taken place and therefore, he was not an eye-witness to the incident. She further contended that in the cross-examination, Susindran (P.W.1) had stated that the accused had stabbed the deceased on his right chest, whereas, the post-mortem report (Ex.P.21) shows that the deceased was stabbed on his left chest.

8 Sukumar (P.W.2), Supplier in Ellora Bar, in his evidence, has stated that the deceased and Susindran (P.W.1) were regular visitors to the Bar and that he knew them; that on 14.03.2010, around 2.45 p.m., the deceased and Susindran (P.W.1) came to the Bar and they were boozing; the accused was also in the Bar and he was asking the deceased to get him liquor; in a fret of anger, the deceased told the accused that he would not get him liquor and if he wants, he can be a pimp for his wife and from the money earned by such an act, he can buy liquor; on account of this, a quarrel ensued, in which, the deceased punched the accused and the accused fell on the showcase, due to which, the showcase broke and then, the accused took a broken glass piece and stabbed the deceased. Sukumar (P.W.2) was cross-examined to show that he was not at all an employee in Ellora Bar and that he was a planted witness. Similar is the evidence of Saravanan (P.W.3) who is also a Supplier in Ellora Bar.

9 It is true that there are some minor discrepancies in the narration of events by P.Ws.1 to 3. However, they are so insignificant that they do not, in any way, destroy the basic fabric of the case. At this juncture, it may be relevant to cite the following passage from the judgment of the Supreme Court in **State of Himachal Pradesh vs. Lekh Raj and another [(2000) 1 SCC 247]**:

"7. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish v. State of M.P.* [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.

10The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged

to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.” (Emphasis supplied)

Only if parrot-like statements are given by the witnesses, will a doubt arise in the mind of the Court about the veracity of their evidence. In this case, Susindran (P.W.1) has stated that he and the deceased consumed liquor in Ellora Bar. Liquor was detected in the stomach of the deceased, as could be seen from the post-mortem report (Ex.P. 21). Susindran (P.W.1) is the cousin of the deceased. He candidly told the Court that the deceased chided the accused and used very harsh words to the extent of saying that the accused can act as a pimp for his wife and get money for buying liquor. This statement of the deceased has been spoken to by all the other witnesses. No malice has been suggested to the witnesses by the accused. If the witnesses had wanted to fix the accused, they would not have truthfully deposed to this effect, but, would have suppressed this aspect in their evidence and would have painted a rosy picture of the deceased.

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10 The contention of the learned counsel for the accused that Susindran (P.W.1) stated that the stab was in the right chest of the accused, whereas, the injury was on the left chest of the accused, would not, *per se*, vitiate his testimony, because, Susindran (P.W.1) himself was in drunken stupor at that time and one cannot expect him to note the correct point of

stab.

11 The learned counsel for the accused submitted that the stab injury was spindle-shaped and such an injury could not have been caused by a broken glass (M.O.10).

12 This Court is unable to agree with the aforesaid submission of the learned counsel for the accused, because, the broken glass (M.O.10) has been thrust inside and taken out and when that happens, the injury would acquire a spindle shape. Further, absence of injury in the hand of the accused cannot mean that he had not used the glass piece at all for stabbing the deceased. The presence of an injury in the hand of the accused would have been a corroborative piece of evidence, but, the absence of it cannot lead to the inference that he had not used the glass piece at all for stabbing the deceased. That apart, the statement of the accused under Section 313 Cr.P.C. cannot be a basis for convicting the accused. However, the statement under Section 313 Cr.P.C. can be used to lend assurance to other evidence adduced by the prosecution. The admission in the Section 313 statement of the accused that he had a fracas with the deceased around that time lends assurance to this Court that the accused was part and parcel of the incident and that the police have not prosecuted a total stranger to the incident.

13 The explanation given by the accused that, for no reason, the

deceased attacked him and that the deceased himself fell on the showcase, on account of which, the glass pierced his chest, due to which, he died, not only appears incredible, but, is also a false explanation, because, on a perusal of the photographs, it is seen that the show case is found to be in an upright position and not in horizontal position. Therefore, when anyone falls on the said showcase, the broken glass will fall on the floor and it cannot pierce the person's chest. A false explanation given by the accused is an incriminating circumstance that can be considered against him. The failure to seize the blood-stained clothes of Susindran (P.W.1) is a remissness in the investigation on the part of the Investigating Officer, but, that cannot enure to the advantage of the accused.

14 Yet another incriminating piece of evidence against the accused is the presence of blood stains in the dhoti (M.O.6) that was worn by him which was found to be that of the deceased, for which, there is no plausible explanation from the accused.

15 The contention of the learned counsel for the accused that in the observation mahazar, blood stains were found at two places, cannot lead to the conclusion that the incident had never taken place at all, especially in the light of the admission by the accused that there was a fracas with the accused at the relevant point of time.

16 The learned counsel for the accused contended that it was the accused who had gone and given the first complaint with some unknown person who assaulted him and that was suppressed by the police and therefore, the police version requires to be rejected.

17 It is the specific case of the prosecution that the deceased punched the accused. Even in the 313 Cr.P.C. statement, the accused has stated that he was punched by the deceased on his eye and lips. This is corroborated by Wound Certificate (Ex.P.16).

18 Dr. Jane Alan Christa who examined the accused on 15.03.2010 at 1.10 a.m., has noted two injuries in the Wound Certificate (Ex.P.16) which have been extracted above. However, before admitting the accused into the prison after he was remanded by the Magistrate, the accused was once again examined by Dr. Arafat Nachchiar, who has, in the Wound Certificate (Ex.P.15), noted that there are only old injuries. Dr. Arafat Nachchiar had examined the accused on 15.03.2010 at 4.00 p.m. Therefore, the injury sustained by the accused on the previous day, which was fresh when Dr. Jane Alan Christa examined him at 1.10 a.m., became stale subsequently in the afternoon at 4.00 p.m. when Dr. Arafat Nachchiar examined, which cannot be said to be destructive of the prosecution case.

19 The Trial Court has considered the fact that the deceased had

uncharitably abused the accused by suggesting to him to be a pimp for his wife, which had naturally infuriated the accused resulting in the attack. That is why, the Trial Court has not convicted the accused under Section 302 IPC, but, has convicted him for the offence under Section 304 (ii) IPC and sentenced him to undergo only four years rigorous imprisonment.

20 In the considered opinion of this Court, the conviction of the accused by the Trial Court warrants no interference. However, taking into consideration the age of the accused and the overall circumstances of the case, this Court is of the view that interest of justice will be served if the sentence is reduced to three years rigorous imprisonment.

21 Accordingly, the sentence of four years rigorous imprisonment imposed by the Additional Sessions Judge, Karaikal on the accused in S.C. No.35 of 2013 vide judgment dated 04.10.2013, is reduced to three years rigorous imprisonment.

With the above modification in the sentence, this Criminal Appeal stands dismissed.

14.12.2017

cad

P.N. PRAKASH, J.

cad

To

- 1 The Inspector of Police
Karaikal Town Police Station
Karaikal
Pudhucherry Union Territory
- 2 The Additional Sessions Judge
Karaikal
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104



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