

Bail Slip

The Accused viz., Vinod Kumar @ Vinod (Aged about 26 years) Soo.Anbalagan was enlarged on bail on 29.10.2018 made in CrI.MP.No.16719 of 2017 in CrI.A.No.785 of 2017 on the file of Hon'ble High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Pronounced on : 21.02.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.785 of 2017

Vinod Kumar @ Vinod ... Appellant/Accused

-vs-

State rep. By
The Inspector of Police,
P-6 Kodunkaiyur Police Station,
Chennai. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned XV Additional Sessions Judge, City Civil Court, Chennai dated 07.08.2017 in S.C.No.178 of 2013.

For Appellant : Mr.P.Pugalenthir

For Respondent : Mrs.M.Prabhavathi,
Additional Public Prosecutor.

J U D G M E N T

R.PONGIAPPAN, J.

The present appeal has been filed by the appellant against the judgment passed in S.C.No.178 of 2013, dated 07.08.2017 on the file of the learned XV Additional Sessions Judge, City Civil Court, Chennai. The appellant is the sole accused in the abovesaid case. The accused stood charged for the offence under Section 302 IPC. The accused denied the charge and opted for trial. Therefore, he was put on trial of the charge. After

full fledged trial the learned XV Additional Sessions Judge, City Civil Court, Chennai, found the accused guilty for the offence under Section 302 IPC. Accordingly, the accused was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.15,000/-; in default of payment of fine amount, to undergo simple imprisonment for six months.

2. Challenging the conviction and sentence, the accused is before this Court, with the present criminal appeal.

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

(i) PW1-Kalimuthu, is running a Noodles shop in Retteri. He is residing in SIDCO 1st Main Road. Near to the same, one steels workshop in the name of Shri Krishna Steels was functioning. On 24.05.2012, at about 8.00 to 9.00PM, while at the time PW1 and PW2-Iyyappan, were chatting with each other, the accused and the deceased came and went from there. After one hour, after purchasing something, both of them came there and entered into Shri Krishna Steels Company. After 30 minutes, both PW1 and PW2 heard the hue and cry of the deceased and thereafter, both of them went to the steel workshop. When at the time PW1 and PW2 entering into the steel workshop, the accused herein jumped over the steps and ran away from the scene of occurrence. On seeing the deceased there was a incised wound on his neck. On examination, both of them found that the deceased was alive. Immediately, they called the ambulance and police. They made arrangements for taking the deceased to the hospital for treatment. After taking the deceased to the hospital, PW1, went to the police station and lodged a complaint under Ex.P1.

(ii) On receipt of the complaint given by PW1, PW14-Thiru.Sivashankar, the then Inspector of Police, B-6 Kodungaiyur Police Station, registered a case in Cr.No.817 of 2012, under Section 302 IPC. The printed FIR is marked as Ex.P10. Immediately, he took up the same for investigation and rushed to the scene of occurrence. In the scene of occurrence, in the presence of witnesses, he prepared the Observation Mahazar under Ex.P11. He had drawn the Rough Sketch under Ex.P12.

(iii) In continuation of the investigation, after receiving the death message of deceased Kumar, in the presence of witnesses and panchayatars, he conducted enquiry over the dead body and prepared Inquest Report under Ex.P13. Thereafter, he recorded the statement from witnesses. After the preparation of the inquest report, he entrusted the dead body to PW9-Thiru.Jayakanthan, who is the then Head Constable, B-6 Kondungaiyur Police Station, with a direction to hand over the dead body for conducting postmortem. He has also submitted an application to the Doctor for conducting postmortem.

(iv) PW10-Dr.Balasubramanian, attached with Stanley Medical College, on 26.05.2012, while he was on duty, received the

requisition given by PW14 and conducted autopsy over the dead body of the deceased Kumar. During the time of post mortem, he found the following external and internal injuries.

"(I) Brown abrasion:

1. 6x4cm abrasion right side of forehead.
2. 4x3cm abrasion right cheek below to eye.
3. 3x1cm abrasion chin
4. 2x1cm abrasion right elbow
5. 2x1cm abrasion left upper cheek
6. 3x1cm abrasion left pinna of the ear

(II) Irregular lacerated wound 2x1cm muscle deep on front and lower part of right side neck, 5cm above the supra sternal notch, 1 cm lateral to midline on right side of the neck. On dissection of then neck, the soft tissues and muscles of the right side neck found contused with severance of the right carotid artery 1 cm below its bifurcation, internal and external carotid artery.

(III) Laceration 1.5x1cm muscle deep on the right side of front of chest situated 4 cm away from midline. 7 cm below to right mid auricular repose."

He preserved the viscera and blood, which was collected from the dead body of the deceased Kumar, for chemical examination. He gave opinion that the deceased would appear to have died of shock and haemorrhage, due to the injuries sustained over the neck. In this regard, he issued a postmortem certificate under Ex.P2.

(v) In continuation of investigation, PW14, made arrangements for taking photographs, in the scene of occurrence. Further, he brought the sniffer dog, for identifying the accused. But the attempt made by PW14 through sniffer dog did not give any fruitful result.

(vi) However, from the scene of occurrence, in the presence of one Umapathi and Manikandan, PW14 recovered the blood stained match box with five match sticks [M.O.2] and blood stained five Kajah Beedies [M.O.3], under the cover of Mahazar Ex.P14.

(vii) On 25.05.2012, at about 6PM, near Moolakadai GNT Road, PW14 arrested the accused and recorded his confession statement in presence of one Kalidass and Duraisamy. In the above statement, the accused admitted the offence and was willing to produce the blood stained Jeans pant and T.Shirt which were worn at the time of occurrence. Accordingly, he brought the investigation team to his house and produced the blood stained dirty sandal colour Jeans Pant [M.O.4] and one blood stained dirty sandal colour T-shirt [M.O.5], which were hidden in his house. The said material objects were recovered by PW14 under the cover of Mahazar Ex.P16. The admissible portion of the confession statement given by the accused is

marked as Ex.P15. Further, in the occurrence place, the accused had identified the blood stained broken beer bottle [M.O.1] and the same was recovered by the investigation officer under the cover of Mahazar Ex.P17. After recovering the same, the accused was sent to judicial custody.

(viii) In the mean time, after the completion of postmortem, PW9 received the blood stained light green small checked Lungi [M.O.6] and blood stained white colour half-hand shirt [M.O.7] from the mortuary and thereafter, he handed over the same to the investigation officer under the cover of Mahazar Ex.P18. After completing the above formalities, since PW14 was transferred from the said post, he handed over the case records to PW15-Thiru.Nagarajan, for further investigation.

(ix) PW15, the then Inspector of Police, Kodungaiyur Police Station after the receipt of case records from PW14, recorded the statements from the witnesses and doctor. He submitted an application before the Magistrate for sending the recovered material objects for chemical examination. Similarly, he submitted one another application, to the Chief Metropolitan Magistrate for conducting identification parade. Thereafter, as per the requisition made by the investigation officer, the material objects were sent to the Forensic Science Department, Chennai for chemical examination.

(x) In this regard, PW11-Tmt.Vimali Thiagarajan, the then Assistant Director, Forensic Science Department, Chennai, received the following nine items for chemical examination.

1. Gauze cloth piece
2. Beedies
3. Match box etc.
4. Chappals
5. Trousers
6. T-shirt
7. bottle piece
8. Lungi
9. Shirt

On examination, she found out that the blood found in Item Nos.1 and 4 to 9 belongs to 'A' group. The serology report issued in this regard was marked as Ex.P3. Further, she examined the blood sample collected from the dead body of the deceased and on examination, she found that the blood collected from the dead body belongs to 'A' group. In this regard, she issued a serology report under Ex.P4.

(xi) After receipt of the requisition letter given by the investigation officer, the learned Chief Metropolitan Magistrate, Chennai issued the proceedings dated 27.06.2012 under Ex.P5 for recording the statement of witnesses. In view of the same PW12-Tmt.K.Sudha, the then XII Metropolitan

Magistrate recorded the Section 164(5) Cr.P.C. statements from PW1 and PW2 and the same were marked as Ex.P6 and Ex.P7.

(xii) Similarly, as per the proceedings of the learned Chief Metropolitan Magistrate dated 27.06.2012 [Ex.P8], PW13, Thiru.Deivam, the then XXII Metropolitan Magistrate, Egmore, conducted the identification parade in Central Jail, Puzhal. In the said identification parade, PW1 and PW2, participated for identifying the suspected accused. In fact the parade was conducted three times, in which only one time, PW1 identified the accused and thereafter PW1 and PW2 have not identified the accused. The report given by PW13 was marked as Ex.P9.

(xiii) After receiving the reports from various departments, PW15 came to the positive conclusion that the accused committed the offence of homicidal death and accordingly, filed a final report against the accused under Section 302 IPC.

4. Based on the materials available, the trial Court framed the charge under Section 302 IPC. The accused denied the charge and opted for trial. Therefore, the accused was put on trial.

5. During the course of trial proceedings, on the side of the prosecution, in order to prove their case, as many as 15 witnesses were examined as PW1 to PW15 and 18 documents were exhibited as Ex.P1 to Ex.P18. Besides, seven material objects, have been marked as MO1 to MO7.

6. Out of the said witnesses, PW1-Kalimuthu and PW2-Iyyappan are the neighbours to the scene of occurrence. Both of them have spoken about the presence of accused alongwith the deceased and also about the assault made by the accused at the time of occurrence. PW1 has further spoken about the lodging of complaint before the police station.

7. PW3-Tmt.Sudamani and PW4-Karthik are the hearsay witnesses. Both of them have stated before the trial Court that only after the occurrence, they heard the death of the deceased Kumar. PW5 is related to the deceased. He has spoken about the identification of the dead body to the police officers.

8. PW6-Gopu, is the Proprietor of Shri Krishna Steels Company in which the accused and the deceased were working. According to him on 24.05.2012 at about 7.00PM, both the accused and the deceased quarrelled with each other and thereafter, he went away from the scene of occurrence.

9. PW7-Thiru.Palani Raj, is the Head Constable administering the sniffer dog in Tamil Nadu Police. PW8-Thiru.P.Kuppusamy, is the Photographer who took 10 photographs of the dead body in the scene of occurrence. PW9-

Thiru.Jayaraman is the Head Constable, who entrusted with the dead body of Kumar with direction to hand over the same to the doctor for conducting post mortem.

10. PW10-Dr.Balasubramanian, attached with Stanley Medical College Hospital has spoken about the injuries found in the dead body and about the cause of death. PW11-Tmt.Vimali Thiagarajan, is working as Assistant Director, Tamil Nadu Forensic Science Department. She has spoken about the details of the chemical examination made on Item Nos.1 to 9, which were collected by the Investigation Officer, during the time of investigation.

11. PW12-Tmt.K.Sudha, is the then XII Metropolitan Magistrate. She has spoken about the recording of Section 164 (5) Cr.PC statements from PW1 and PW2. PW13-Thiru.Deivam, is also another one Magistrate. He has spoken about the process of identification parade conducted in the Central Jail, Puzhal and also he has spoken about the witnesses, who have participated in the identification parade.

12. PW14-Thiru.Sivasankar and PW15-Thiru.Nagarajan, are the police officers, who have stated about the registration of the case, details of investigation conducted in this case and about the filing of the final report.

13. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any document on his side.

14. Having considered all the above, the learned XV Additional Sessions Judge, City Civil & Sessions Court, Chennai, found the accused guilty for murder. Accordingly, the accused was convicted for the offence under Section 302 IPC and sentenced, as stated in the 1st paragraph of this judgment.

15. Aggrieved over the conviction and sentence, the accused is before this Court with the present Criminal Appeal.

16. We have heard Mr.P.Pugalenthirai, learned counsel appearing on behalf of the accused and Ms.M.Prabhavathi, learned Additional Public Prosecutor. We have also perused the records carefully.

17. The learned counsel appearing on behalf of the accused would contend that before the trial Court, none of the witnesses have stated about the occurrence. In fact the evidence given by PW1 and PW2 before the trial Court, in respect to the alleged occurrence, is having full of contradictions, when comparing the said evidence with the evidence given by the Investigation Officer. Though, they were cited as eyewitnesses to the occurrence, they have not identified the accused before

the Magistrate during the time of identification parade. In the said circumstances, the report given by the Assistant Director, Forensic Science Department, Chennai in respect to the blood stain found in the Material objects alone is not sufficient to hold that the case of the prosecution, is a genuine one. According to him, the trial Court did not appreciate the evidence recorded on the side of the prosecution perspectively.

18. Per contra, the learned Additional Public Prosecutor would contend that though some of the contradictions have arisen in the evidence of PW1 and PW2, the subsequent conduct of the accused will prove the fact that the accused alone committed the offence. In support of the same, the evidence given by the Scientific Assistant also is in favour of the prosecution. Therefore, she prayed to dismiss the appeal.

19. Now, on considering the rival submissions made by the learned counsel appearing on either side, before the trial Court, the complaint given by PW1 is marked as Ex.P1. In the said complaint, PW1 has specifically stated that when at the time both PW1 and PW2, were chatting with each other, unknown two persons quarrelled with each other in the upstairs. He has specifically not stated the identity of the accused and the deceased by mentioning their names. After saying as above in the complaint, during the time of giving evidence as PW1, the defacto complainant has stated that at the time of occurrence, when he reached the occurrence place alongwith PW2, the accused after jumping over the staircase, ran away from the scene of occurrence. He has specifically stated that he has not seen the assault made by the accused. In this regard, PW14, the investigation officer, has stated in his cross examination, that PW1 did not say anything about the assault made by the accused. Accordingly, PW1, as a first time only before the trial Court stated the occurrence, which do not have any reliance and inspire confidence over his evidence.

20. In the same way, PW2 has also stated the occurrence in his chief examination. Here also the investigation officer has stated that PW2 has not stated the occurrence before him during the time of recording Section 161 Cr.P.C. Statement. Therefore, the evidence given by PW1 and PW2 in respect to the occurrence did not inspire confidence over their evidence.

21. In this connection, it is necessary to see the evidence given by the learned Judicial Magistrate in respect to the identification made by the witnesses during the time of identification parade. As per the evidence both PW1 and PW2 have not identified the accused at the relevant point of time. Infact, the identification parade was conducted immediately after the occurrence. If really PW1 and PW2 have seen the occurrence as stated in their chief examination, it is very easy for them to identify the accused in the Central Jail, Puzhal.

22. So, in all aspects the evidence given by PW1 and PW2 does not inspire confidence. In otherwise, the witnesses examined on the side of the prosecution as PW3 to PW6, are not eye witnesses. They have heard the news and come to the scene of occurrence, only after the death of the deceased Kumar. So, the evidence given by PW3 to PW6 are also not sufficient to hold the case of prosecution as a genuine one.

23. In otherwise, according to the Investigation Officer, Item No.5-Trousers [M.O.4] and Item No.6-T.Shirt [M.O.5] were recovered from the accused based on his confession. On the other hand, Item No.8-Lungi [M.O.6] and Item No.9 shirt [M.O.7] were recovered from the dead body of the deceased Kumar. On examination, the blood found in all items belong to 'A' group. So the only available evidence against the accused is the above evidence which has been stated by PW11, the Assistant Director, Forensic Science Department.

24. In this regard, the learned Additional Public Prosecutor, made a submission that only because of the reason that the accused committed the offence, all material objects referred above, are seen with 'A' group blood.

25. In this regard, the learned counsel appearing on behalf of the accused would contend that the recovery of material object alone is not sufficient to accept the guilt of the accused. In this context, he relied on the judgment of our Hon'ble Apex Court S.Gopal Reddy Vs. State of Andhra Pradesh, reported in AIR 1996 SC 2184, wherein our Hon'ble Apex Court has held as follows:

"27..... The evidence of an expert is rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking, independent and reliable corroboration. In Magan Bihari Lal Vs. State of Punjab (AIR 1977 SC 1091), while dealing with evidence of a handwriting expert, this Court opined:

"We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally

acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra Vs. State of U.P. AIR 1957 SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Vs. Md. Isa, AIR 1963 SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Vs. Subodh Kumar, AIR 1964 SC 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin Vs. State of M.P. AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

26. Accordingly, applying the said principle with the case in our hand all the witnesses examined on the side of prosecution have not given any evidence in the form of corroborating the evidence given by the expert. Infact all the witnesses examined on the side of the prosecution do not inspire confidence over their evidence. When comparing the evidence of PW1 and PW2 with the evidence of Investigation Officer, it is very clear that the PW1 and PW2, have stated the occurrence for the first time before the trial Court and not before the investigation officer, at the time of investigation.

27. Yet another strong circumstances which arise in favour of the accused in this case is, during the relevant point of time before the Magistrate, the witnesses viz., PW1 and PW2 have not identified the accused. More than that, when at the time of lodging complaint before the investigation officer, PW1 has not stated anything about the name and other particulars of the accused.

28. So, on culling out the entire circumstances, we are having the doubt as to whether PW1 and PW2 saw the occurrence as stated before the trial Court. In this connection, it is relevant and useful to see the judgment of our Hon'ble Apex Court, in Sudhakar @ Sudharasan Vs. State Rep. By the Inspector of Police, Srirangam Police Station, Trichy, Tamil Nadu, reported in (2018) 2 MLJ (Crl) 618 (SC), wherein our Hon'ble Apex Court has held as follows:

"There exists reasonable doubt in this case as the case of prosecution is un-supported by independent witnesses, ridden with contradictions, good motive for false prosecution and filled with suspicious circumstances. Further there is not only insufficiency of evidence but also lack of credibility on the trustworthiness of PWs 1 & 5 which culminated into disproving the prosecution case and alleged guilt of the accused. The prosecution has, therefore, failed to establish the guilt of the accused-appellant beyond reasonable doubt by adducing cogent evidence. Lower Courts completely misdirected themselves and the conviction imposed upon the accused by the trial Court and confirmed by the High Court suffers from patent error of law and perversity of approach and deserves to be set aside."

29. So, applying the above said principle to the case in our hand, in this case also, the evidence given by the prosecution witnesses are having full of contradictions and omissions and hence, does not inspire confidence. Therefore, relying on the evidence given by PW1 and PW2, is unsafe to accept the case of the prosecution. While at the time of disposing of the case, the trial Court without seeing the contradictions available in the evidence of PW1 and PW2 and came to the conclusion that the accused alone committed the offence.

30. As rightly pointed out by the learned counsel appearing on behalf of the accused, the evidence given by the Magistrate in respect to the identification of the accused by PW1 and PW2 and the evidence given by PW1 and PW2, are entirely different from the evidence given by the investigation officer and these strong circumstances create a doubt as to whether the case of prosecution is true or false. Therefore, the said evidences given by the prosecution witnesses cannot be relied on, for accepting the case of the prosecution.

31. In the light of the above discussion, we are of the considered opinion that the prosecution has failed to prove their case beyond reasonable doubt. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the

accused, by the learned XV Additional Sessions Judge, in S.C.No.178 of 2013 dated 07.08.2017, is set aside. The accused is acquitted of the charge. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the accused.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The learned XV Additional Sessions Judge,
City Civil Court, Chennai.

2. The Superintendent,
Central Prison -I,
Puzhal, Chennai.

3. The Inspector of Police,
P-6, Kodunkaiyur Police Station,
Chennai.

4. The Public Prosecutor,
High Court, Madras.

5. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Pugalenthir, Advocate SR.No.149951

Criminal Appeal No.785 of 2017

CP(CO)
GMY (27/07/2020)

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