

Bail Slip

The Appellants in Crl.A.No.784/2018 viz 1. Parthiban S/o. Sampath 2. Manikandan S/o. Durai and the appellants in Crl.A. No. 785/2018 viz 1. Sampath S/o. Kumarasamy 2. Manikandan S/o. Sagadevan were directed to be released on bail as per order of this Court dated 12.12.2018 and made in Crl.M.P. 16250/2018 in Crl.A.No.784/2018 and Crl.M.P. 16258/2018 in Crl.A.No.785/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.784 & 785 of 2018

Crl.A.No.784 of 2018

1. Parthiban

2. Manikandan

... Appellants/accused 1 & 2

-vs-

State represented by
The Inspector of Police,
Thiruvannamalai City Police Station,
Thiruvannamalai.
(Crime No. 23/2012)

... Respondent/complainant

Crl.A.No.785 of 2018

1. Sambath

2. Manikandan

... Appellants/accused 3 & 4

-vs-

State represented by
The Inspector of Police,
Thiruvannamalai City Police Station,
Thiruvannamalai.
(Crime No. 23/2012)

... Respondent/complainant

Common Prayer: Criminal Appeals filed under Section 374 (2) of the Code of Criminal Procedure, to call for the records and to set aside the judgment and sentence dated 22.11.2018 of the learned Principal District and Sessions Judge, Thiruvannamalai, passed in S.C.No.97 of 2013.

For Appellants : Mr.N.R.Elango, Sr. Counsel
in both appeals For Ms. Aruna Elango
in Crl.A. 784/2018
Mr.N.R.Elango, Senior Counsel for
Mr.M. Krishnamoorthy in
Crl.A.No.785/2018.

For Respondent : Mrs.M.Prabhavathi,
in both appeals Additional Public Prosecutor.

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

The present two appeals have been filed by the appellants against the judgment passed in SC No.97 of 2013 dated 22.11.2018, on the file of the learned Principal District and Sessions Judge, Thiruvannamalai.

2. The appellants in Crl.A.No.784 of 2019 are arrayed as 1st and 2nd accused and the appellants in Crl.A.No.785 of 2019 are arrayed as 3rd and 4th accused in the abovesaid case. All the accused stood charged for the offence under Sections 341, 302, 302 r/w 120(b) and 34 IPC. The accused denied the charges and opted for trial. Therefore, they were put on trial of the charges. After full fledged trial, the learned Sessions Judge, found the accused guilty of the offences under Section 341, 302, 302 r/w 34 and 341 r/w 34 IPC. Accordingly, all the accused were convicted and sentenced as follows:

Offence	Sentence
Under Sections 302 IPC	A1 and A2 were sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, each and in default to pay the fine amount, to undergo two years rigorous imprisonment.
Under Section 341 IPC	A1 and A2 were sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/-, each and in default to pay the fine amount, to undergo one week simple imprisonment.
Under Section 302 r/w 34 IPC	A3 and A4 were sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, each and in default to pay the fine amount, to undergo two years rigorous imprisonment.
Under Section 341 r/w 34 IPC	A3 and A4 were sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/-, each and in default to pay the fine amount, to undergo one week simple imprisonment.

The trial Court ordered the sentences to run concurrently.

3. Challenging the conviction and sentence the accused are before this Court by way of filing the present appeals.

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

(i) PW1-Shanthi, is the wife of deceased Durai. On the day of occurrence, she was in her house and at about 9.00am, some known persons came to her house and told that some unknown persons murdered her husband. Immediately, she rushed to the hospital and saw the dead body of her husband. She gave complaint before the police under Ex.P1.

(ii) PW21-Mr.P.Sundaramoorthy, the then Sub Inspector of Police, Thiruvannamalai Police Station, on 04.01.2012, received the complaint from PW1 and registered a case in Crime No.23 of 2012 under Section 302 IPC. The printed FIR is marked as Ex.P15. Immediately, after the registration of the case, he handed over the case records to PW25-Mr.Gunasekaran, for the purpose of investigation.

(iii) PW25, the then Inspector of Police, Thiruvannamalai East Police Station, received the FIR from PW21 and took up the same for investigation. On 04.01.2012 at about 10.00am, he went to the scene of occurrence and made arrangements for taking photographs of the occurrence place. The photographs, five in numbers, are marked as Ex.P9. Then he prepared the observation Mahazar in presence of PW11-Baba and PW12-Saravanan. Observation Mahazar is Ex.P19. He drawn the rough sketch under Ex.P20. He recorded the Section 161 Cr.P.C statements from the witnesses, who were present in the occurrence place. In the presence of same witnesses, in the scene of occurrence, he recovered the vehicle, which was owned by the deceased Durai, a pair of chappal, a yellow thread, blood stained soil and ordinary soil under the cover of Mahazar Ex.P21.

(iv) In continuation of the investigation, on the same day, at about 11.15am, in the presence of panchayatars and witnesses, he conducted enquiry and prepared the inquest report [not marked]. After preparation of the inquest report, he made arrangements for conducting autopsy. He has also, sent a requisition to the Doctor, attached with Thiruvannamalai Government Hospital, Coimbatore, for conducting autopsy.

(v) PW16-Dr.Kathiravan, Assistant Surgeon, attached with Thiruvannamalai Government Hospital, on 04.01.2012 at about 2.25pm received the requisition letter given by PW25 and conducted post mortem. During the time of post mortem, he found the following external and internal injuries over the dead body of deceased Durai.

External Injuries:

1. Stab injury 5cm x 3cm x 3 cm right side of chest region - near anterior axillary fold.
2. Stab injury 1 x 3 x 4 cm above the 1st wound
3. Stab injury 4 x 2 x 8 cm near left Axilla.
4. Stab injury 1 x 2 x 3 cm above 3rd injury
5. Stab injury 2 x 1 x 4 cm neck anterior centre
6. Cut injury transverse through mandible anteriorly 15x2x4 cm
7. Cut injury neck anterior aspect of neck 10x2x3 cm
8. Cut injury below nose anteriorly through both maxilla 20x3x3cm anteriorly
9. Cut injury 20x2x2 from left side forehead through right eye till right ear.
10. Cut injury 3 x2x2cm right forehead
11. Multiple associated cut injuries in face, neck and shoulder
12. Abrasion 5 x3cm right forearm near wrist.
13. Multiple abrasion around right wrist with lacerations.
14. Right eye ball collapsed due to cut injury.

Internal Injuries:

1. Hyoid bone fracture
2. Tracheal ring injuries 1st, 2nd and 3rd ring
3. Fracture base of skull through right orbit.
4. Nasal septum dislocated from nasal floor.
5. Maxilla fracture both side
6. Mandible fracture
7. Cut injury of neck muscles & nerves
8. Bilateral External jugular vein and external carotid artery cut injury.

Collection of 50 ml blood in cranial cavity.

Brain: intact

Thorax: All internal organs intact cut sized pale

Abdomen: All internal organs intact cut sized Pale

External genitalia : Normal

He collected the viscera and blood from the dead body and sent the same for chemical examination. He gave opinion that the deceased would have appeared to have died of shock and haemorrhage, due to the multiple injuries sustained by the individual and time of death is 4 to 8 hours prior to the post mortem. The post mortem certificate issued by PW16 was marked as Ex.P8.

(vi) In continuation of the investigation, PW26- Vinayagamurthy, the then Inspector of Police, Thiruvannamalai

Town Police Station, on 06.01.2012 arrested the 1st and 2nd accused and recorded the confession statement given by them. On the same day, at about 4.30pm, after making identification by 1st accused, he recovered the blood stained Veecharuval (Machete), blood stained striped black colour pant and brown colour T-shirt under the cover of Mahazar [Exs.P23 and P24]. On the same day, at about 3.00pm, on identification by 2nd accused Manikandan he recovered a aruval (Bill hook) and blood stained dark green colour pant and blood stained cement colour checked full hand shirt under the Cover of Mahazar. He examined the witnesses and recorded their statements. On the same day, at about 7.00pm, he arrested 3rd Accused-Sampath and 4th Accused-Manikandan and sent them for judicial custody. He forwarded the material objects to the Court of Judicial Magistrate No.1, Thiruvannamalai, for further action. He submitted an application before the learned Judicial Magistrate No.1, Thiruvannamalai, for sending the material objects and viscera for chemical examination.

(vii) PW9, the then Assistant Director, Forensic Science Department, Dharmapuri, on 12.01.2012, when he was on duty, received the following material objects, related to this case for chemical examination.

- Item 1: Tarred earth mixed with small stones on which were dark brown stains.
- Item 2: Tarred earth mixed with small stones.
- Item 3: A white dhoti with black, white and red borders on which were profuse dark brown stains.
- Item 4. A torn white shirt on which were profuse dark brown stains.
- Item 5: A torn while sleeveless banian on which were dark brown stains.
- Item 6: A torn blue jatti on which were dark brown stains.
- Item 7: A long bill hook with wooden handle and measuring 60.0cm in length on which were dark brown stains.
- Item 8: A silken black trousers with self stripes on which were dark brown stains.
- Item 9: A maroon T-Shirt on which were dark brown stains.
- Item 10: A long bill hook with wooden handle and measuring 56.0cm in length on which were dark brown stains.
- Item 11: A silken dark green trousers on which were dark brown stains.
- Item 12: A silken full sleeved shirt with grey and white cross stripes on which were dark brown stains.
- Item 13: A piece of gauze cloth on which were dark brown stains.

Item 14: A piece of gauze cloth on which were dark brown stains.

(viii) During the course of examination, PW9 found blood stain in Item Nos.1 and 3 to 14. After examination, he referred the blood stained articles for biological examination. After completing all formalities, he issued report under Exs.P13 and 14.

(ix) Similarly, after the receipt of blood samples from Forensic Science Department, Dharmapuri, PW23-Tmt.V.Subalakshmi, the then Assistant Director, Forensic Science Department, Chennai, examined the sample blood and issued a certificate that the blood group of accused is 'AB'. Further she has stated that the blood found in Item Nos.3, 4, 5, 7, 9 and 12 belongs to 'AB' group.

(x) On the same day, after the receipt of hyoid bone, PW24-Dr.Parasakthi, attached with Chennai Government Medical College Hospital, examined the same and issued a certificate under Ex.P18, that there is no fracture in the hyoid bone. The viscera report also was marked as Ex.P17, before the trial Court. According to the said report, there was no poisonous substance found in the dead body of the deceased Durai.

(xi) In continuation of investigation, PW26, submitted an application before PW18 for recording the confession statement under Section 164 (5) Cr.P.C. from the witnesses viz., PW5, PW6 and one Ramesh. On 04.01.2012, after completing all formalities, which is necessary for recording the said statements, PW18, the then Judicial Magistrate, Chengam, recorded the statements, from the witnesses. The statements recorded by PW18 was marked as Exs.P10, P11 and P12.

(xii) Alongwith the requisition for recording the 164 (5) Cr.P.C. statements, the investigation officer had filed another one application before the learned Principal District Judge, Thiruvannamalai, for conducting identification parade. In turn, the Judicial Magistrate, Arni was nominated for conducting identification parade, thereafter, PW22-Tmt.S.Tasneem, Judicial Magistrate, Arni, conducted an identification parade, in which PW5-Kalaiarasu, PW6-Ravi, one Ramesh and Pachayappan have participated as witnesses. Identification parade report was marked under Ex.P16. As per the report, none of the witnesses identified the suspected accused at the time of identification parade.

(xiii) After the receipt of identification parade report from PW22 and other reports, which were prepared during the time of investigation, PW26, came to the positive conclusion that the appellants having committed the offence of homicidal death

and laid the charge sheet against all the appellants under Sections 341, 302, 302 r/w 34 and 120(b) IPC.

5. Based on the materials available, the trial Court framed the charges under Sections 341, 302, 302 r/w 34 and 120(b) IPC. All the accused denied the charges and opted for trial. Therefore, the accused were put on trial.

6. During the course of trial proceedings, in order to prove the case of prosecution, on their side, as many as 26 witnesses were examined as PW1 to PW26. Apart from that 24 documents were exhibited as Ex.P1 to P24.

7. Out of the said witnesses PW1-D.Shanthi, is the wife of the deceased Durai. She has spoken about the information received from third parties about the death of her husband and about the lodging of complaint before the police station. PW2-P.Sadhasivam, is the relative of deceased Durai. PW3-Sakthi and PW4-Jagan, are the sons of the deceased Durai. All of them have stated that after hearing the news they went to the Government Hospital and saw the dead body of the deceased Durai.

8. PW5-Kalaiarasan, PW6-Ravi, PW7-Sekar, PW8-Sundaramoorthy, PW9-Ravi and PW10-Mohan, are alleged to be the eyewitness to the occurrence. However, before the trial Court they have not given any evidence in support of the case of prosecution, even after treating them as a hostile witness, during the time of cross examination by the learned Public Prosecutor, they have not supported the case of the prosecution.

9. PW11-Baba and PW12-Saravanan, who attested in the Observation Mahazar, have also not supported the case of the prosecution and thereby, they are also treated as hostile witnesses. PW13-Chandrasekaran, is the witness, who attested the confession statement given by PW1 and PW2 and also in the recovery mahazar prepared by the investigation officer. He has also not stated anything in support of the case of the prosecution. Hence, he has also been treated as a hostile witness on the side of the prosecution.

10. PW14-Ashok Kumar, the then Assistant Director, Forensic Science Department, has spoken about the examination of the viscera and about the issuance of the viscera report. PW15-Pachaiyyappan, alleged to be witness for conspiracy made between the accused, was also not in support of the case of the prosecution. PW16-Dr.Kathiravan, attached with Government Hospital, Thiruvannamalai, has spoken about injuries sustained by the deceased and about the first aid given to the deceased. PW17-Selvaraj, is the photographer.

11. PW18-Tmt.Mythili is the Judicial Magistrate working in

Chengam District. She has spoken about the recording of 164 Cr.P.C. statement recorded from the alleged eye witnesses. PW19-Jaganathan and PW23-Subalakshmi, are the Scientific Assistants working in Forensic Science Department, Thiruvannamalai. They have spoken about the examination of blood stained material objects, which were collected by the investigation officer during the time of investigation.

12. PW20-Murugan, the then Head Constable of Thiruvannamalai Town Police Station, has stated about the handing over of FIR to the Magistrate. PW21-V.Sundaramurthy, the then Sub Inspector of Police, Thiruvannamalai Town Police Station, has stated about the receiving of the complaint and registration of the case.

13. PW22-Tmt.S.Tasneem, the then Judicial Magistrate, Arani, has spoken about the identification parade conducted by her in Vellore Central Jail. PW24-Dr.Parasakthi, Professor in Chengelpet Government Medical College and Hospital, has spoken about the examination of hyoid bone. PW25-Gunasekaran and PW26-Vinayagamurthy, are the police persons, who have stated about the details of investigation conducted in this case and about the laying of the charge sheet.

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

15. Having considered all the above, the learned Principal District and Sessions Judge, Thiruvannamalai, found the appellants guilty and convicted for the offence under Sections 341, 302 and 341 r/w 34 and 302 r/w 34 IPC and sentenced them, as stated in the 2nd paragraph of this judgment.

16. Aggrieved over the conviction and sentence, the appellants are before this Court with the present Criminal Appeals.

17. We have heard Mr.N.R.Elango, learned Senior Counsel appearing for the appellants/accused and Ms.M.Prabhavathi, learned Additional Public Prosecutor. We have also perused the records carefully.

18. The learned senior counsel appearing on behalf of all appellants/accused in both the appeals made a short submission that before the trial Court all the independent witnesses, examined on the side of the prosecution including the eye witnesses, have not supported the case of the prosecution. In spite of that, the learned trial Judge convicted the accused, which is erroneous under law. Accordingly, he prayed to allow

the appeals.

19. Per contra, learned Additional Public Prosecutor contended that the evidence given by the investigation officer will connect the accused with the nexus of crime. In otherwise, she conceded that the independent witnesses examined on the side of the prosecution before the trial Court, has not supported the case of the prosecution.

20. Now, on going through the evidences recorded from the witnesses examined before the trial Court, PW1 to PW4 are the relatives of the deceased Durai. According to their evidence, they have all went to the scene of occurrence and seen the deceased Durai only in the Government Hospital, Thiruvannamalai. In otherwise, in order to prove the case of the prosecution, six witnesses were examined in the trial Court as PW5 to PW10 as eyewitness to the alleged occurrence. But, none of the witnesses have stated about the occurrence particularly in order to connect the appellants with the nexus of crime.

21. Though the cross examination of the learned Public Prosecutor may be relevant for some occasions, in this case, during the time of cross examination by the learned Public Prosecutor, after treating them as hostile witness, they have not stated anything, in a way to connect the accused with the crime. In the said circumstances, the witnesses who attested in confession statement given by the accused and in the recovery mahazar prepared by the investigation officer, also have not said anything about the arrest of the accused, recording of confession statement and about the recovery. The person, who attested the observation mahazar, also is not in support of the case of the prosecution.

22. According to the case of the prosecution, during the course of investigation, the witnesses, who alleged to be the eye witnesses for the occurrence, have given Section 164 Cr.P.C statements before PW18. Though they have stated the occurrence before the Magistrate, it is not in doubt that the statement given by the witnesses under Section 164 Cr.P.C., 1973 is like a 'previous statement' given during investigation under Section 161 Cr.P.C., 1973.

23. Reliance is placed on the judgment of this Court, in Sivakumar Vs. State [Crl.A.No.131 of 2014 dated 31.07.2015]. This Court has already held that the Section 164 Cr.P.C. statement is not substantive evidence, because of the reason that the same was not recorded in the presence of the accused. In fact with regard to the value to be given to the statement under Section 164 Cr.P.C in Ram Kishan Singh v. Harmit Kaur, reported in AIR 1972 SC 468, our Hon'ble Apex Court has held as

under.

"8. A statement under Section 164 of the Code of Criminal Procedure, 1973 is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness...."

24. Therefore, the principle laid down by our Hon'ble Apex Court is clear that the statement given by the witness under Section 164 Cr.P.C., has no relevance to find out the occurrence, except for the purpose of corroboration. Hence, Section 164 Cr.P.C statements marked as Exs.P10, 11 and 12, are also not at all having any value for deciding the case in favour of the prosecution.

25. The next aspect in this case is during the time of investigation, the alleged eye witnesses, who have participated in the identification parade, has also not supported the case of prosecution. Infact before the trial Court the report in respect to identification parade has been marked as Ex.P16. As per the said report the said witnesses have not identified the suspected accused at the time of conducting the parade. Further, the persons who are all participated as witnesses in the identification parade, have also not given any evidence in support of the case of the prosecution and also about their participation in the identification parade. Accordingly, Ex.P16, identification parade report also does not have any valuable piece of evidence for deciding the case in favour of the prosecution.

26. In the said circumstances, it is not in dispute the experts who examined the viscera, hyoid bone and blood stained material objects were examined as PW14, PW24 and PW19, respectively. Further, PW16, the Doctor, who conducted the post mortem has also given evidence in support of the prosecution. Reliably, there are not an eyewitness, only they are experts, who gave opinion in respect to the materials collected during the time of investigation.

27. In respect to the admissibility of the evidence given by the said witnesses, our Hon'ble Apex Court in Ram Narain Vs. State of Uttar Pradesh, reported in 1973 (2) SCC 86, has held that the opinion given by the expert has to be received with great caution.

28. Indian Evidence Act, provide relevancy of opinion of third persons, which is commonly called in our day to day practice as expert's opinion. These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness. The exception is based on the principle that the Court can't form opinion on the matters, which are technically complicated and

professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters.

29. However, in the judgment of S.Gopal Reddy Vs. State of Andhra Pradesh, reported in AIR 1996 SC 2184, 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."

30. Applying the said principle with the case in our hand, in respect to the recovery of Material Objects, none of the witnesses, who were present at the time of occurrence, have supported the case of the prosecution. Therefore, in the said situation, we are not in a position to accept the evidence given by the expert fully for proving the guilt of the accused, since the said witnesses are not corroborated through other witnesses.

31. The remaining evidence available in this case is the evidence given by the investigation officer. No doubt, their evidence is also not at all corroborated through witnesses, who are all present during the time of investigation, as stated by PW25 and PW26. Ofcourse, the trial Court, without appreciating the said circumstances, blindly accepted the evidence given by the investigation officer and convicted the accused up to the maximum period. So, the stand taken by the trial Court is not within the legal framework.

32. Therefore, in the light of the above discussion, we are of the considered opinion that the prosecution has not proved the guilt of accused beyond reasonable doubt. Accordingly, both the appeals are allowed. The conviction and sentence imposed upon the appellants/accused, by the learned Principal District and Sessions Judge, Thiruvannamalai, in S.C.No.97 of 2013 dated 22.11.2018, is set aside. The accused are acquitted of the charges. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

- 1.The Principal District and Sessions Judge, Thiruvannamalai.
 2. The Judicial Magistrate No.I, Tiruvannamalai District
 3. The Chief Judicial Magistrate, Tiruvannamalai District
 4. The Inspector of Police, Tiruvannamalai City Police Station, Tiruvannamalai District
 5. The Superintendent, Central Prison, Vellore
 6. The Public Prosecutor
- High Court, Madras 104.

7. The officer in charge, Thallakulam Police Station, Madurai.
+1 CC to Mr.M. Krishnamoorthy, Advocate sr 4842.

Criminal Appeal No.784 & 785 of 2018

PM(CO)
SP(26/02/2020)