



Bail Slip

Appellant / Accused No.1 viz., M.Prabakaran, (26/18)
S/o.Muthuchamy, was released on bail vide this Court order dated
24.04.2018 in CrI.MP(MD)No.2110 of 2018 in CrI.A(MD)No.131 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.02.2020

PRONOUNCED ON: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRIMINAL APPEAL(MD)No.131 of 2018

M.Prabakaran : Appellant / Accused No.1

Vs.

The State of Tamil Nadu
represented by its
The Inspector of Police,
Thirukokarnam Police Station,
Pudukottai District.
[Crime No.252 of 2012]

: Respondent / Complainant

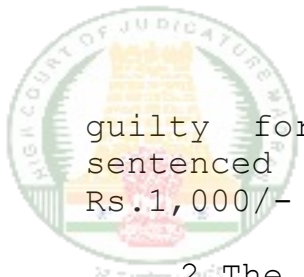
PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records of the judgment dated 07.11.2017 in S.C.No.43 of 2013 on the file of the Additional District and Sessions Court (Special Court for E.C. Act), Pudukottai District in Crime No.252 of 2012 on the file of the respondent Police and set aside the same and acquit the appellant/accused No.1.

For Appellant : Mr.I.Pinaygash
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J.

This appeal is arising out of the conviction and sentence imposed by the Additional District and Sessions Court, (Special Court for EC Act), Pudukottai in S.C.No.43 of 2013, dated 07.11.2017, and by which, the appellant/accused No.1 was found



guilty for the offence under Section 302 IPC, convicted and sentenced to undergo a life imprisonment and to pay fine of Rs.1,000/- with default clause.

2. The appellant [accused No.1] along with his father Muthusamy /accused No.2 was tried before the trial Court for the offence under Sections 302 and 294(b) IPC. The trial Court by the judgment impugned in this appeal, acquitted accused No.2 from the charge under Section 302 IPC and also acquitted this appellant from the charge under Section 294(b) IPC. However, this appellant was found guilty, convicted and sentenced as stated supra. As against the conviction and sentence the appellant/accused No.1 preferred the present appeal.

3. The facts of the case, in a nutshell, are as follows:

3.1. Accused No.2 Muthusamy and the deceased Murugaiyah are brothers. PW2 is their mother. This appellant / accused No.1 is the son of accused No.2. They were having two house properties and those house properties were partitioned between the accused and the deceased, as the tiled house to the deceased Murugaiyah and the thatched house to accused No.2 Muthusamy. On the date of occurrence, on 29.07.2012, at about 9.30pm, there was a quarrel between the deceased Murugaiyah and his wife Tmt.Selvam [PW1]. The deceased was scolding his wife. But, accused No.2 misunderstanding that the deceased was scolding him, questioned the deceased as to why he was scolding him and there arose a wordy quarrel between the deceased and accused No.2, in which, by referring the improper partition on sharing of houses, accused No.2 is said to have assaulted the deceased with stick on his head. Accused No.1, son of accused No.2 also intervened in the quarrel and attacked the deceased with iron grill gate [MO2] on his head. In the incident, the deceased sustained head injury and PW1 and a neighbour [PW5] took the deceased to the Government Hospital, Pudukottai, from where he was referred to the Government Hospital, Thanjavur.

3.2. When the accused was taking treatment in the Government Hospital at Thanjavur, he died on 31.07.2012. In the meantime, on a medical intimation received from the Government hospital, Thanjavur on 30.07.2012, at about 12.57 p.m, Tmt.R.Neela [PW14], Sub Inspector of Police of Thirukokarnam, Police Station went to the Government Hospital at Thanjavur and recorded the statement [ExP1] from PW1 / wife of the deceased at about 6.30 p.m, returned to the Police Station and registered a case in Crime No.252 of 2012 for the offence under Sections 294(b), 323, 324 and 506(ii) IPC. She also went to the place of occurrence on the next day morning, i.e., on 31.07.2012 at 6.30 a.m and prepared an observation mahazar [ExP2] in the presence of the witnesses PW7 and PW8. She also recovered an iron grill gate [MO2] found in the place of occurrence, returned to the Police Station and recorded the statements from PW1 and PW2. She



also arrested accused No.2 at about 11.00 a.m and arrested accused No.1 at about 4.00 p.m. The deceased, who was taking treatment in the hospital, died on 31.07.2012 at about 7.55 p.m and therefore, PW14 referred the file to the Inspector of Police [PW15].

3.3.PW15 took over the investigation on 31.07.2012, altered the charge to Section 302 IPC and forwarded the alteration report [ExP15] to the Court. He also conducted an inquest in the Government Hospital, Thanjavur on 01.08.2012 from 08.00 a.m to 10.00 a.m in the presence of Panchayatars and the inquest report is marked as [ExP16]. He also made a request for conducting postmortem of the body to the Doctor.

3.4.Dr.Rajkumar [PW13] received the requisition and conducted postmortem on 01.08.2012 at 12.20 p.m and noted down the following injuries:

"External Injuries:

1. A 8cm sutured laceration wound over the left parietal region near midline.
2. An abrasion of size 2X 0.5cm present over the forehead left side.
3. An abrasion size (3X2cm) over right forehead.

Internal Injuries.

1. On the opening of scalp:

1. Subscalpal hemorrhage present over the parietal region. On both sides and in the right temporal region.

2. Irregular linear fracture along with sutureline of 20cm length extending from the right temporal region to the left temporal region

2. On opening skull cap:

1. Subdural hemorrhage - more in the right side temporal parietal and frontal region.

2. Sub arachnoid hemorrhage - laceration of (2X1X1cm) present over the cerebellum temporal region right side.

3. Pontine hemorrhage present on right side

3. Base of the skull: Fracture right temporal region, a linear irregular fracture of length 6 cm."

3.5. In conclusion, the Doctor gave his opinion that the deceased would have appear to have died due to effects and complications of multiple injuries involving vital organ brain.

3.6. The Inspector of Police [PW15] has also made a request for taking custody of the accused and recorded their confession statements. Pursuant to the confession statements he also recovered a casuarina stick [M01] under Exp8. After recording the statement of the witnesses, he concluded the investigation and filed his final report before the learned Judicial Magistrate, Pudukottai on 30.08.2012 and the same was taken on file in PRC No.11 of 2013. The



case was committed to the Court of Sessions and bound over to the Additional Sessions Judge, Pudukottai in S.C.No.43 of 2013.

4.During the trial, on the side of the prosecution, 15 witnesses were examined and 16 exhibits were marked besides 2 material objects.

5.Except PW1 and PW2 all other independent witnesses turned hostile.

6.PW2 the mother of the deceased as well mother of the accused No.2, who supported the prosecution case in the chief examination, has also turned hostile during the cross examination.

7.The incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure and they denied the same as false. The accused have not examined any witness on their behalf.

8.In conclusion of the trial, the trial Court, found accused No.1 guilty for the offence under Section 302 IPC, acquitted accused No.1 for the offence under Section 294(b) IPC and acquitted accused No.2 as stated supra.

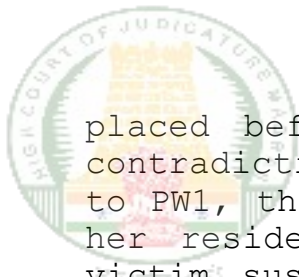
9.Aggrieved over the conviction and sentence imposed by the trial Court, the present appeal is filed.

10.Heard Mr.I.Pinaygash, learned Counsel for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State.

11.Mr.I.Pinaygash, learned Counsel for the appellant has made his submission as follows:

11.2.An accidental death has been wrongly projected as a homicide and the trial Court has erroneously convicted the appellant for the offence under section 302 IPC. The origin and the genesis to the occurrence is suppressed by the prosecution. In the First Information Report [Exp11], it is specifically mentioned that the intimation from the Government Hospital was received that the deceased was taking treatment in the hospital on account of an accident and based on that medical intimation, the Sub Inspector of Police [PW14] went to the hospital, recorded the statement and registered the case.

11.3.As per that medical intimation, the deceased fell down while riding the bike and sustained head injury. Curiously in this case, neither the Doctor, who treated the deceased in the Government Hospital at Pudukottai nor the Doctor at Thanjavur was examined as well the accident register and the medical intimation were not



placed before the Court. He also pointed out that the material contradiction with regard to the time of the occurrence, according to PW1, the occurrence had taken place on 29.07.2012 at 8.30 p.m at her residence, whereas, as per the FIR it is recorded that the victim sustained injuries at 9.30 p.m. When there is a material contradiction in the FIR itself, the genesis of the prosecution case itself is doubtful. Therefore, the prosecution case is not reliable.

11.4. Suppression of the accident register is also a material defect on the side of the prosecution and the trial Court ought not to have convicted the appellant based on a solitary evidence of PW1. The evidence of PW1 is wholly unreliable and the trial Court has also disbelieved the evidence of PW1 to the extent of acquitting the accused No.2 that the accused No.2 was implicated on account of enmity between PW1 and the accused. When the evidence of PW1 was disbelieved to acquit the accused No.2, the same yardstick ought to have been applied that the case is solely relied upon the evidence of PW1 to extend the benefit to this appellant also.

11.5. The learned counsel for the appellant also relied on the evidence of the Doctor PW13 that the injuries sustained by the deceased could be possible due to the accidental fall and therefore, the evidence of the Doctor coupled with the fact of non examination of the Doctors, who admitted the deceased and treated, also non production and non examination of the accident register entries, throw a strong doubt on the case of the prosecution and in all fairness, the trial Court ought to have extended the benefit to the appellant also.

12. Per contra, the learned Additional Public Prosecutor has submitted as follows:

12.2. By referring the evidence of PW1 and PW2 the learned Additional Public Prosecutor submitted that the prosecution has established its case beyond any reasonable doubt through PW2, who is the mother of the deceased and accused No.2, as well the grand mother of the accused No.1. Therefore, PW2, who spoke about the occurrence during the chief examination, turned hostile during the cross examination. Pertinently, the cross examination was conducted after three years from the chief examination and therefore, by applying the ration laid down by the Hon'ble Supreme Court, the evidence of PW2, can be relied upon as a corroborative piece of evidence of the evidence of PW1. The evidence of PW1 is also supported by the evidence of the Doctor as well the recovery of the Grill gate [MO2] from the place of occurrence.

12.3. The discrepancies with regard to the registration of the case as well as the accidental death is that A2 is the person, who took the deceased to the hospital and at his instance it was initially recorded as an accident at the time of admission, but, whereas, PW1 in her complaint, recorded on the same day has clearly



stated the manner of the occurrence. Apart from the statement [ExP1], the investigating officer has also conducted an inquest on 01.08.2012 before the panchayatadars and all the panchayatadars unanimously contended that the occurrence has taken place in such a manner as stated by PW1 in the statement ExP1.

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12.4. With regard to the time of occurrence, though it is pointed out by the learned Counsel for the appellant that the statement was recorded at 11.15 p.m, PW14, the Sub Inspector of Police has clearly stated in her evidence that the intimation was received at 12.57 p.m and pursuant to the intimation, she went to the hospital at Thanjavur, recorded the statement by 6.30p.m, returned Police Station and registered a case at 9.15 p.m. Since it is mistakenly mentioned in the coloumns that the receipt of intimation as well as the registration time are mentioned as 9.15 pm, it cannot be considered that the statement itself was recorded only at 9.15 p.m.

12.5.The evidence of the Doctor [PW14] and the postmortem certificate [ExP10] would also refer to the nature of the injuries and the opinion of the Doctor that the death is due to *effects and complications of multiple injuries involving vital organ brain*. However, on a stray answer pointed out during the cross examination without any supporting material that the injuries sustained by the deceased could also be possible by an accident, it cannot be considered that the injuries are possible only by accident.

12.6.No doubt that accused No.2 was acquitted by the trial Court and as against the acquittal of accused No.2, no appeal was preferred by the State. The acquittal of the co-accused itself would not entitle the convict to get an order of acquittal, when there are direct testimony available from the witnesses PW1 and PW2 as against this appellant. Therefore, he pleaded to confirm the conviction and sentence imposed on this appellant.

13.This Court has paid its anxious consideration to the rival submissions made by the learned Counsel on either side and also perused the materials placed on record.

14.The occurrence has taken place on account of a familial dispute among the close relatives. This appellant is the elder brother's son of the deceased. Accused No.2 and the deceased were allotted with the properties in partition and in the allotment, accused No.2 was given a thatched house, whereas younger brother the deceased was given a tiled house. On the date of occurrence, when the deceased was scolding his wife, accuse No.2 by misunderstanding the same that the deceased was scolding him had questioned the deceased and therefore, there arose a wordy quarrel and consequently, the deceased was assaulted with a wooden log and iron grill gate. Immediately, the deceased was taken to the hospital by



the neighbour PW1 and accused No.2 also accompanied the deceased. Since the occurrence had taken place between the relatives, at the time of admitting the victim in the hospital, it was reported, as if an accident at the instance of accused No.2. The deceased survived for one day and died only on 31.07.2012 at about 7.53 p.m. The deceased was initially taken to the Government Hospital at Pudukottai and from there, he was referred to the Government Hospital, Thanjavur. The respondent Police failed to recover the accident register from the Pudukottai Hospital as well as from the Hospital at Thanjavur

15. Similarly, the investigating Officer failed to examine the Doctor, who treated the victim at Pudukottai and Thanjavur. This is in fact a material defect on the part of the investigating agency. But due to this lapse on the investigation officer, the entire prosecution case cannot be thrown away.

16. The evidence of PW1 and PW2 clearly establish the case of the prosecution, the manner in which the occurrence had taken place. Both PW1 and PW2 in their chief examination have clearly stated that accused Nos.1 and 2 have assaulted the deceased on the date of occurrence on 29.07.2012. The chief examination was recorded on 05.09.2014 and the cross examination was conducted only on 12.01.2017, nearly after a period of 27 months. During the cross examination on 12.01.2017, PW1 has stated about the occurrence, whereas, PW2 turned hostile that she stated in the chief examination at the instructions of the Police.

17. The Hon'ble Supreme Court in *Khujji @ Surendra Tewari v State of* reported in AIR 1991 SC 1853, where it was observed that:

"the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court *Bhagwan Singh v. State of Haryana*, [1976] 2 SCR 921; *Rabinder Kumar Dey v. State of Orissa*, [1976] 4 SCC 233 and *Syed Iqbal v. State of Karnataka*, [1980] 1 SCR 95 that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

18. PW2 is none other than the mother of accused No.2 and the grand mother of this appellant. Therefore, in the interregnum, accused No.1 managed to influence PW2 during the cross examination on 12.01.2017, but PW2 in her chief examination has stated specifically that the deceased sustained injuries at the instance of this appellant as well the accused No.1 But, on the very same



evidence, the accused No.2 was acquitted by the trial Court and the State has not preferred any appeal as against the order of acquittal. The acquittal of co-accused itself would not automatically absolve the guilt of the other accused.

19. The Hon'ble Supreme Court in **Rizan and Another Vs State of Chhattishgarh**, reported in **[2003] 6 SCC 661** has held as follows:

12. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of *falsus in uno falsus in omnibus* (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno falsus in omnibus* has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See *Nisar Ali v. State of U.P.* [AIR 1957 SC 366 : 1957 Cri LJ 550]) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate accused who had been acquitted from those who were convicted. (See *Gurcharan Singh v. State of Punjab* [AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one, specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a deadstop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of



acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P.* [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and *Ugar Ahir v. State of Bihar* [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of the felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of M.P.* [AIR 1954 SC 15 : 1954 Cri LJ 230] and *Balaka Singh v. State of Punjab* [(1975) 4 SCC 511 : 1975 SCC (Cri) 601 : AIR 1975 SC 1962] .) As observed by this Court in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593 : AIR 1981 SC 1390] normal discrepancies in evidence are those which 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 those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category into which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar* [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220 : JT (2002) 4 SC 186] and *Gangadhar Behera v. State of Orissa* [(2002) 8 SCC 381 : 2003 SCC (Cri) 32 : (2002) 7 Supreme 276] . Accusations have been clearly established against the accused-appellants in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and convicted accused are concerned.

19. The Hon'ble Supreme Court in ***State of A.P. v. Pullagummi Kasi Reddy Krishna Reddy***, (2018) 7 SCC 623, has held as follows:

"11. The principle of "falsus in uno falsus in omnibus" has not been accepted in our country. [See *Bhagwan Jagannath Markad v. State of Maharashtra*, (2016) 10 SCC



537, p. 548, para 19 : (2017) 1 SCC (Cri) 189] Even if some accused are acquitted on the ground that the evidence of a witness is unreliable, the other accused can still be convicted by relying on the evidence of the same witness [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness [State of U.P. v. Dan Singh, (1997) 3 SCC 747, p. 759, para 32 : 1997 SCC (Cri) 469] . The High Court was oblivious to this settled position of law. The High Court highlighted the minor inconsistencies and omissions in the evidence of PWs 1 to 3 and PWs 5 to 7 to disbelieve them. The High Court wrongly refused to believe the eyewitnesses on the ground that they attempted to implicate as many persons as possible by making omnibus allegations. The High Court further erred in holding that PWs 1, 6 and 7, who were the eyewitnesses travelling in the jeep with the deceased, were not speaking the truth as they were close relatives and supporters of Deceased 1. The rejection of the evidence of PWs 2, 3 and 5 by the High Court on the ground that they did not attribute specific overt acts to each accused is also erroneous."

19. Following the above ratio laid down by the Hon'ble supreme Court and considering the evidence of PW1, this Court comes to the conclusion that the prosecution has established the offence committed by the appellant. The benefit of doubt extended to the accused No.2, cannot be considered as an advantage. The evidence of PW1 and PW2 clearly establishes the guilt of the accused No.1/ this appellant. The evidence of PW1 and PW2 is also corroborated by the evidence of the Doctor PW13 and also the postmortem certificate [Exp10]. The recovery of the grill gate [MO2] from the place of occurrence would further strengthen the case of the prosecution.

20. The occurrence has taken place on the sudden heat of passion between the accused and the deceased. The deceased was scolding and it was questioned by the accused No.2 and therefore, there was a wordy quarrel between the deceased and accused No.2. In this incident, the appellant son of the accused No.1 in support of his father intervened and in a sudden heat of passion, attacked the deceased, the deceased sustained injuries and died in the hospital on the next day. Considering the manner of the the occurrence, arising out a sudden quarrel without premeditation, the injuries sustained by the deceased and also considering the acquittal of the accused No.1 from the charge under Section 294(b), this Court deems it fit to alter the offence into 304(ii) of IPC instead of 302 IPC.

21. In the result, the appeal is partly allowed. The conviction and sentence are hereby imposed for the offence under Section 304 (II) IPC.

<https://hccases.courtsofmadras.org/>



The appellant is convicted and sentenced to undergo four years of rigorous imprisonment with a fine of Rs.1,000/- and in default of payment of the fine, to undergo three months rigorous imprisonment. The trial Court is directed to secure the appellant and confine him to prison. The bail bonds executed if any, shall stand cancelled.

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Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Additional District and Sessions Court
(Special Court for E.C. Act), Pudukottai District
- 2.The Judicial Magistrate, Pudukottai.
- 3.The Chief Judicial Magistrate, Pudukottai District.
- 4.The Inspector of Police,
Thirukokarnam Police Station,
Pudukottai District.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 7.The record Keeper (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

**JUDGMENT MADE
in**

**CRIMINAL APPEAL (MD) No.131 of 2018
22.07.2020**

SMA/06/08/2020/11P/9C