



Crl.A(MD)No.157 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**Crl.A(MD)No.157 of 2026
and
Crl.M.P(MD)No.2286 of 2026**

Periyakaruppan

... Appellant/Accused No.2

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Nagamalaipudukottai Police Station,
Madurai District.
(Crime No.130 of 2012).

... Respondent/Respondent

PRAYER:- Criminal Appeal is filed under Section 415(2) of BNSS, 2023 r/w Section 374(2) of Cr.P.C to call for the records in S.C.No. 332 of 2012 on the file of the learned VI Additional District Judge, Madurai and set aside the Judgment dated 20.08.2025 and acquit the appellant/accused of the charges.



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For Appellant : Mr.C.Suresh Kannan

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal is directed as against the Judgment passed in S.C.No.332 of 2012 dated 20.08.2025, on the file of the learned VI Additional District Judge, Madurai, thereby convicting the appellant for the offences punishable under Section 302 of I.P.C (2 counts) and also under Section 201 r/w 302 of I.P.C.

2.The case of the prosecution is that the first accused is the husband of P.W.1. After their marriage, they were blessed with two children. Thereafter, the first accused developed an illicit intimacy with the third accused. While being so, on 08.04.2012 at about 02.30 p.m., when P.W.1 was washing clothes, the first accused came there



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in an auto and took the two children along with him. Thereafter, they did not return home and as such, P.W.1 along with her mother searched for the children. Ultimately, she found that near the garden of one Ayothi, accused Nos.1 to 3 had taken the children towards a well and dropped them in the well belonging to Ayothi. After hearing the alarm raised by P.W.1, P.W.2 and P.W.3, who were working in the nearby field, also witnessed the occurrence. Both the children were taken out from the well and were found dead. Thereafter, P.W.1 went to the police station and lodged a complaint. On receipt of the said complaint, the respondent police registered an F.I.R in Crime No.130 of 2012 for the offences punishable under Sections 302, 201 r/w 34 of I.P.C. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court.

3.In order to bring the charges to home, the prosecution examined P.W.1 to P.W.12 and marked Exs.P1 to P23. On the side of



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the accused, no witnesses were examined and no documents were produced before the trial Court.

4. During trial, the first accused died. The trial Court found A.2 and A.3 guilty for the offences punishable under Section 302 I.P.C (2 counts) and under Section 201 r/w Section 302 of I.P.C. They were sentenced them to undergo life imprisonment for each count and imposed a fine of Rs.5,000/- for each count, in default, to undergo six months Simple Imprisonment for the offence under Section 302 I.P.C (2 counts) and also sentenced them to undergo three years Simple Imprisonment and imposed a fine of Rs.5,000/- each, in default, to undergo six months Simple Imprisonment for the offence under Section 201 r/w Section 302 I.P.C. Aggrieved by the same, the second accused as appellant has preferred the present appeal.



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5.The learned counsel appearing for the appellant submitted that the Trial Court convicted the appellant solely based on the evidence of P.W.1 to P.W.3, who had turned hostile and are interested witnesses. In fact, the complaint itself is doubtful, since the same was lodged by P.W.1 without even mentioning the names of P.W.2 and P.W.3, who were projected as eyewitnesses to the occurrence. Though P.W.1 to P.W.3 turned hostile, the Trial Court convicted the appellant by relying upon their evidence. He further submitted that P.W.1 deposed out of enmity, since the first accused had illicit intimacy with the third accused. Even according to the chief examination of P.W.1, she had no personal knowledge regarding the alleged illicit intimacy between the first accused and the third accused, and she had seen the third accused for the first time in the Court. The prosecution also failed to conduct a test identification parade to identify the accused. Therefore, the prosecution miserably failed to prove the charges and even then, the Trial Court erroneously convicted the appellant.



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6.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that though P.W.1 to P.W.3 turned hostile, they had categorically deposed in their chief-examinations about the specific overt acts as against the accused. They were cross-examined after a delay of 1-1/2 years, which resulted in turning hostile. Further P.W.1 categorically deposed about the illegal intimacy between the first accused and A.3, which constituted the motive for eliminating the children born to P.W.1. The Doctor, who conducted autopsy, had deposed as P.W.7. According to the post mortem report, no water was found in any part of the bodies of the deceased children, indicating that they were strangled by the accused and thereafter the bodies thrown into the well. Hence, the prosecution had categorically proved the charges and the Trial Court rightly convicted the appellant. Therefore, it does not warrant any interference of this Court.



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7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.During the trial, the first accused died. The appellant herein was arrayed as the second accused. The motive projected by the prosecution was that A.2 had illicit intimacy with the first accused. The first accused had married P.W.1 and through the wedlock, two children were born, who are the deceased in this case. The appellant is the cousin brother of the first accused. Therefore, the prosecution projected that all the three accused had a motive to do away with the lives of the children born to the first accused and P.W.1.

9.While being so, on 08.04.2012 at about 02.30 p.m, when P.W.1 was washing clothes, the first accused came there and took the two minor children in his auto. Even after a long time, they did not return back to home. Hence, P.W.1 along with her mother, searched



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for the children. Finally, she found that all the accused had taken the children towards a well belonging to one Ayodhi and dropped them in the well. Immediately, P.W.1 made an alarm, upon which P.W.2 and P.W.3, who were working in the field, also reached the well. Thereafter, both the children were taken out from the well and were found dead.

10. Though the prosecution mainly projected the motive to be the illicit intimacy between the first accused and third accused, P.W.1, even while deposing that she had quarrelled with the first accused due to such illicit intimacy, did not even whisper anything about any intention on the part of the accused to do away with the lives of the children. It is not the case of the prosecution that the children had seen the accused in a compromising position or that the children had threatened to disclose the illicit intimacy to others. Therefore, the prosecution miserably failed to establish the motive for the accused to do away with the lives of the children.



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11.P.W.1 deposed that she had seen the accused taking the children towards the well and also dropping them into the well. However, she did not state that prior to throwing them into the well, both the children were killed by the accused. Further, though P.W.1 stated in her chief-examination that the accused had taken the children to the well, she subsequently turned hostile during cross-examination. In fact, though P.W.1 was cross-examined after a period of some time, there was absolutely no reason for her to turn hostile, especially when the first accused had already died.

12.Even in her chief-examination, P.W.1 deposed that both the children were taken only by the first accused in his auto at about 12.30 p.m. The second and third accused were not present in the auto. After several hours when the first accused did not return back to home, P.W.1 along with her mother made search. The entire chief examination of P.W.1 appears artificial and unbelievable one. The relevant portion of her deposition is as follows:

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“08.04.2012 அன்று பகல் 12.30 மணிக்கு, நான் என் வீட்டில் துணி துவைத்துக்கொண்டிருந்தேன். அப்போது, என் கணவர் அவருக்குச் சொந்தமான TN 64B 9929 என்ற ஆட்டோவில், எங்கள் இரண்டு குழந்தைகளை ஏற்றிக்கொண்டு சென்றார். நானும், என் கணவர் தானே ஏற்றிச்செல்கிறார் என்று நினைத்துக்கொண்டு, துணி துவைத்துக்கொண்டிருந்தேன். அதன் பின்னர், மிகவும் நேரமானதால், நான் அவர்களைத் தேடிப்பார்த்தேன் (சாட்சி ராவிப் பார்த்தோம் என்று கூறுகிறார்) என் அம்மாவும் தேடிப்பார்த்தார். என் கணவரைத் தேடி ஆட்டோ ஸ்டாண்டிற்குச் சென்றேன். பின்னர், கோட்டைக்கரை காலனி பக்கம் சென்று பார்த்தேன். அங்கே, என் கணவரின் ஆட்டோ மண் சாலையில் அயோத்தி என்பவருக்குச் சொந்தமான தோட்டத்தில் கிணறு பக்கமாக நின்றிருக்கொண்டிருந்தது.

என் கணவரும், 3ம் எதிரி - பிரேமலதாவும் என் மகளைத் தூக்கிக்கொண்டு சென்றனர். அவர்களுக்குப் பின்னால் 2ம் எதிரி என் மகனைத் தூக்கிக்கொண்டு சென்றார். அவர்கள் செல்வதைப் பார்த்து மண் சாலையில் ஆட்டோ அருகில் நின்றிருக்கொண்டு, நான் கத்தினேன். நான் கத்துவதைப் பார்த்து, அங்கு தண்ணீர் பாய்ச்சிக்கொண்டிருந்த அயோத்தியும், வள்ளியும் எதிரிகள் என் குழந்தைகளைத் தூக்கிச்செல்வதைப் பார்த்தனர்.

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எதிரிகிள் மூவரும் என் குழந்தைகளை
தூக்கிக்கொண்டு சென்று, கிணற்றில்
போட்டுவிட்டனர்.”

13. Thereafter, P.W.1 turned hostile. The Trial Court justified its conclusion by observing that P.W.1 to P.W.3 were cross-examined after a long period and as such, though they turned hostile, their chief examinations were taken into account and convicted the accused. However, in her cross-examination, P.W.1 categorically deposed that all the three accused were not responsible for the death of her children. It is also seen that P.W.1 had married another person and had given birth to a child and at the time of her cross-examination, she was pregnant for the second time.

14. P.W.2 and P.W.3 also turned hostile and did not support the case of the prosecution. Even in the chief examination of P.W.2, it was revealed that he heard the noise of P.W.1 and she shouted that the first accused dropped both the children into the well. Further, he



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also deposed that he did not know what was the motive behind the crime. Thus, even in the chief-examination, P.W.2 did not support the case of the prosecution. Though he subsequently turned hostile during cross-examination, the prosecution did not gain any support from his testimony.

15. Even assuming that as per the evidence of P.W.1 to P.W.3, the accused had dropped both the children into the well, the medical evidence does not support the theory of death by drowning. After the recovery of both the bodies, they were subjected for autopsy. The Doctor, who conducted autopsy, deposed as P.W.7. The autopsy reports of both the deceased were marked as Ex.P.5 and Ex.P.6. As per the final opinion, the first deceased would appear to have died of asphyxia due to smothering 16-20 hours prior to postmortem and the second accused would appear to have died of asphyxia due to smothering 16-20 hours prior to postmortem.



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16. Therefore, it is made clear that no water was found in any part of bodies of both the deceased children. It is not the case of the prosecution that both the children were strangled or smothered to death and thereafter their bodies were thrown into the well. Further, both the children sustained similar ante-mortem injuries, which are as follows:

“Sriharan – 1. Abrasion 2 cm X 1 cm noted over right shoulder.

2. Contusion noted on inner aspect of entire both upper and lower lips.

Sriharini – 1. Abrasion 2 cm X 1 cm on right elbow.

2. Contusion noted on inner aspect of entire both upper and lower lips”

17. Thus, it is clear that both the children were dead prior to being dropped into the well and that their deaths were not the result of drowning. Further, the second accused is none other than the maternal uncle's son of the first accused and had absolutely no motive to commit the crime. In order to prove the alleged motive,



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the prosecution failed to examine any independent witness. P.W.1 to P.W.3 did not even whisper anything regarding any specific motive attributable on the part of the second accused.

18.In fact, P.W.1 categorically deposed that she had seen the third accused for the first time only in Court. Therefore, the identity of the accused itself is doubtful. The prosecution also failed to conduct a test identification parade, which is fatal to the case of the prosecution when the identity of the accused itself is not clear. Hence, the prosecution failed to prove its case beyond reasonable doubt and the benefit of doubt must necessarily be extended to the accused.

19.When two views are arising out of the prosecution case, the view favorable to the accused should be taken into consideration. Though P.W.7 who conducted autopsy over the dead bodies opined that the deaths were caused due to asphyxia caused by smothering,



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the Trial Court concluded that both the children had been done to death before dropping into the well and their death is not a result of accidental fall. However, there is absolutely no evidence to come to the conclusion that the deceased were strangulated or smothered by the accused before being thrown into the well. Further, the post mortem reports categorically rule out the presence of water in the bodies of the deceased. Therefore, when it is a case of drowning, water might have been present in the bodies of the deceased. Therefore, the prosecution has miserably failed to prove the charges as against the appellant. The Judgment of conviction and sentence passed by the Trial Court has no legs to stand further and it is liable to be dismissed.

20.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.332 of 2012 dated 20.08.2025 on the file of the learned VI Additional District Judge, Madurai. cannot be sustained and are liable to be set aside.

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21.In the result, this Criminal Appeal is allowed and the Judgment made in S.C.No.332 of 2012 dated 20.08.2025, on the file of the learned VI Additional District Judge, Madurai, is hereby set aside. The appellant is acquitted of all the charges. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellant. The appellant shall be set at liberty forthwith, if he is no longer required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

**[G.K.I.J.,] & [R.P.J.,]
10.02.2026**

NCC :Yes/No
Index :Yes/No
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To

1.The VI Additional District Judge,
Madurai.

2.The Inspector of Police,
Nagamalaipudukottai Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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