



*CrI.A(MD)No.254 of 2020*

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 18.02.2025

Pronounced on : 04.03.2025

CORAM:

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**

**AND**

**THE HONOURABLE MS.JUSTICE R.POORNIMA**

**CrI.A(MD)No.254 of 2020**

1. R.Senthilkumar

2. N.Rajangam

.. Appellants /A1 & A2

**[2<sup>nd</sup> appellant died on 25.09.2024-  
appeal abated as against him]**

Vs.

State represented by,

The Inspector of Police,

Thirupachethi Police Station,

Sivagangai (Crime No.235/2011),

Sivagangai District.

.. Respondent/Complainant

**PRAYER:** Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment dated 31.01.2020 in S.C.No.85 of



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2014 on the file of the learned Principal District and Sessions Judge,  
Sivagangai.

For Appellants : Mr.P.Andiraj  
For Respondent : Mr.A.Thiruvadikumar  
Additional Public Prosecutor

### **JUDGMENT**

**Dr.G.JAYACHANDRAN, J.**  
**and**  
**R.POORNIMA, J.**

The appellants 1 and 2 are son and father. The trial Court found them guilty for offence under Section 341 IPC and sentenced them to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo 15 days simple imprisonment. Also, as against A1, the court found him guilty for offence under Section 302 IPC and sentenced him to undergo Life Imprisonment with fine of Rs.2,000/-, in default, to undergo 3 months rigorous imprisonment. Similarly, A2 was found guilty for offence under Section 302 read with 34 IPC and sentenced him to undergo Life Imprisonment with fine of Rs.2,000/-, in default, to undergo 3 months rigorous imprisonment.



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2. The above said judgment rendered in S.C.No.85 of 2014 by the learned Principal District and Sessions Judge, Sivagangai is under challenge in the present appeal. The grounds of appeal reads as under:-

The judgement of the trial Court is based only on presumption, surmise conjuncture. The Court below failed to appreciate the contradictions in respect of material facts. The testimony of PW1 and PW2 ought to have been rejected by the trial Court since they both are interested witness and there is no corroboration to their ocular evidence. The contradiction between the testimony of PW1, PW2 and PW3, particularly, in respect of scene of occurrence and the role alleged to have been played by the accused persons, though properly highlighted by the defence, were not considered by the Court below. The motive as well as the meeting of mind between the two accused to attract offence under section 34 of IPC not established by the prosecution beyond reasonable doubt. While so, the conviction of the accused without sound reasoning and evidence beyond pale of doubt is liable to be set aside and the appellants have to be set acquitted and set free.



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**The case of the prosecution:**

3. Kalyanasundaram (the deceased) and Rajangam (the second accused) are blood brothers. The second accused was demanding share in the 35 cents of land held by his brother Kalyanasundaram. Since it was the self acquired property of Kalyanasundaram, he refused to share the property with his brother, the second accused. Hence, there was animosity between them. On 20.09.2011 at about 3.00 pm Kalyanasundaram(deceased) and his son Ganesan (PW1) went to their field and returning back to the home. By that time in search of the deceased and PW1, the son-in-law of PW-1 by name Senthilkumar (PW2) came near the Tirupachethi Thidal and all three joined and returning back. At about 6.15 pm, while the deceased was walking ahead of PW-1 and PW-2 about 200 feet away followed by PW1 and PW2 conversing with each other, A1 and A2 came out from the sugarcane field restrained Kalyanasundaram. A2 caught hold of the hands of Kalyanasundaram and demanded to give share in the property and threatened Kalyasundaram if he refuse to share the property, he will be done to death. However, Kalyanasundaram refused to give share in the property,



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Immediately A2 told his son A1 **“we need not leave this old man alive any further, hack him”**. Thereafter A1 attacked Kalyanasundaram on his head with the bill hook. Kalyanasundaram on sustaining injury fell to ground. A2 again told A1 **“he should not be left alive, chop his head”**. A-1 again attacked Kalayasundaram on the neck. Thereafter A-1 and A-2 ran away. Kalyanasundaram died on the spot.

4. The crime was reported by PW1 to the respondent police through a written complaint- Ex.P1. The FIR was registered in Thirupachethi Police Station Crime No.235 of 2011 at 18.45 hours by the Sub-Inspector of Police Mr.Krishnan (PW-12) and placed it before the Inspector of Police Mr.Kumaran (PW13) for further action. PW-13, took up the investigation. He visited the scene of crime and prepared rough sketch (Ex.P-14) and observation mahazar (Ex.P-2). After collecting soil from the scene of crime both with blood stain and without blood stain, conducted inquest in the presence of panchayathars and prepared the inquest report (Ex.P-15) at about 19.45 hrs. Next day (21.09.2011) on information at about 6.30 a.m, PW-13 went near Vaigai Meenachipuram bridge, found A1 and A2 and arrested



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them. Upon their confession the bill-hook (M.O.1) used by A-1 to commit the crime was recovered from the bush at Karuppaiah Pillai graveyard.

5. PW1-Ganesan, son of the deceased Kalyanasundaram had deposed about the motive and also of the overt-act of A1 and A2 as found in his complaint Ex.P-1. PW-2, yet another witness to the occurrence has corroborated PW1. The scientific officer who conducted serology material objects had given his report (Ex.P-11). Though one of the witness (PW6) to the recovery had turned hostile, the trial Court with the aid of the ocular evidence and the medical evidence, relying upon the dictum laid in the judgment of the Hon'ble Supreme Court in ***Mritunjoy Biswas v. Pranab alias Kuti Biswas and another [2013 (12) SCC 796]*** held the charges against A-1 and A-2 found proved and sentenced them to undergo imprisonment as stated above.

6. The learned counsel for the Appellant submitted that the lower Court failed to consider PW1 and PW2 who are claiming as witnesses to the occurrence are really interested witnesses and their evidence lack

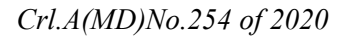


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corroboration. The house of the deceased is on the way to the police station, but PW-1 had deposed that he crossed his house but did not inform about the death of his father to anyone in his house. The case of prosecution is that for some time there was threat to the life of the deceased and was always moving with someone as aid. PW-2 had also deposed that, on that fateful day, the deceased and PW-1 did not return home for a long time, so his family members asked him to go to the field and find out what happened to them. Thus, it appears that the family members were anxious to know what happened to the deceased who did not return home. While so, it is natural to expect PW-1 to inform his family members first about the incident. Failure to inform his family first is un-natural and contrary to any human conduct.

6.2. With regards to lodging of the complaint which is marked as Ex.P1, the informant PW-1 had deposed that the complaint Ex.P-1 was written at the police station with the help of a passerby. Whereas PW-12 had deposed that PW-1 came to the Station along with the written complaint. No other villagers accompanied PW-1. Contrarily, PW-3 who had attested Ex.P-1, had deposed that, in the station the complaint was written. It was not



6.3. The presence of PW-1 and PW-2 to witness the crime is highly improbable since, PW-1 in his complaint has stated that he heard A-2 instigating A-1 to attack his father, after A-1 attacked his father, both of them ran away. He and PW-2 lifted his father. Whereas before the Court, he denies that he and PW-2 lifted the body of the deceased soon after he fell down after receiving the injury. Contrarily, PW-2 claims that after the attack, he and PW-1 lifted the deceased but their cloths did not strained with blood. If really PW-1 and PW-2 were within audible distance to hear the voice of the accused, they would have tried to prevent the assault or atleast tried to apprehend them after the attack. If they had lifted the bleeding victim, blood strains would have been in their clothes. The trial Court ought to have considered this grave contradiction which shakes the root of the prosecution case and the reliability of the witnesses PW-1 and PW-2 about their presence at the time of occurrence.



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6.4. PW-1 had deposed that on the date of occurrence, he and his father after taking their lunch at 2.00 pm, left the house to the field by 3.00 pm. They working in the field for nearly 2 hours. At about 5.30 p.m, PW-2(Senthilkumar) came to the field in search of them. Whereas, PW-13, the Investigating Officer had deposed that when he enquired Balasubramaniam(PW-4), who is the son-in-law of the deceased Kalyanasundaam, he came to know that the deceased went to the field in the morning itself.

6.5. The contradiction about the scribe of the complaint coupled with the fact that PW-3 came to the scene of crime after hearing the news, then went to the police station and signed in Ex.P-1 not given due consideration by the trial Court. In the FIR, the time of occurrence is mentioned as 18.15 hrs. The said complaint registered at 18.45 hrs. It reached the residence of the Judicial Magistrate at 9.00 pm. If the evidence of PW-2 to be believed, that PW-3 came to the spot within 10 minutes and stayed with him for 5 minutes and then left to the Police Station, which is



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3km away from the scene of crime, then his presence at police station before 18.15 hrs to sign in the complaint as attesting witness has to be necessarily disbelieved. If the converse is true, then the evidence of PW-3 has to be disbelieved. Either way, the prosecution case suffers material infirmity regarding the time of occurrence and the presence of PW-1 and PW-2. The trial Court erred in not considering the material contradictions between PW-1, PW-2 and PW-3 with respect to the manner in which the incident happened and the manner in which it was reported to the police. The evidence of PW-1, PW-2 and PW-3 are not only contradictory but also self destructive. As such lower Court ought to have acquitted the accused.

7. According to the Investigating Officer, the accused were arrested on 21.09.2011 at about 6.30 am. Thereafter M.O.3 weapon was recovered under mahazar(Ex.P-17) in the presence of two witnesses. Since PW6 (VAO) who is one of the witness to the recovery has turned hostile and had deposed that he signed in the Mahazar(Ex.P-17) at the police station where he saw the accused persons and say nothing else, the recovery of M.O3(Bill hook) based on the alleged confession of the accused remains



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unproved. Further, the description of the weapon which was alleged to have recovered on 21.09.2011 based on the confession given by A-1, find place in column No.10 of the inquest report-Ex.P-15 prepared on the previous day ie., 20.09.2011 between 19.45 hrs to 21.30 hrs. Therefore M.O.3 sent for serology examination is not the weapon found at the scene of crime or the weapon alleged to have been used for the crime.

8. The learned Counsel for the appellant, submitted that the lower Court failed to consider that the prosecution has failed to prove the material and foundational facts including the motive alleged against the accused. Hence, the contradictions which go to the root of the prosecution case has to be appreciated properly.

9. Per contra, the learned Additional Public Prosecutor for the State submitted that, the contradictions mentioned by the learned defence counsel are very trivial in nature.

10. The evidence of the ocular witnesses namely, PW-1 and



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PW-2 not been impeached despite extensive cross examination. PW-3 and PW-4 are the witnesses who had spoken about the animosity between the accused and the deceased in respect of sharing the 35 cents of land. The blood stained soil recovered from the scene of occurrence tallies with the blood group of the deceased. The serology report marked as Ex.P11 and the evidence of PW-5 who is witness to the observation mahazar (Ex.P-2) establishes the scene of crime. Therefore, the contention of the learned counsel for the appellant that the prosecution has not established the scene of crime does not carry merit.

11. The learned Additional Public Prosecutor further submitted that, the reference of the weapon with description in the inquest report dated 20.09.2011 prepared prior to the recovery of the weapon on the next day ie., 21.09.2011 at 6.30 a.m, though renders the recovery doubtful, the lapse is attributable to the Investigating Officer, that lapse cannot whittled down the overwhelming evidence of the ocular witnesses.

12. Relying on the judgment of the Hon'ble Supreme Court in



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***Munnalal and another –vs- State of UP*** reported in **CDJ 2023 SC 059**, the learned Additional Public Prosecutor submitted that mere defects in the investigation by itself cannot constitute ground for acquittal. It is the legal obligation of the Court to examine carefully in each case the prosecution evidence de hors the lapse committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether the lapses affect the object of finding out the truth.

13. He further submitted that, the Hon'ble Apex Court in the above case, has observed that, the endeavour of the Court has to reach the root of the matter by analyzing and assessing the evidence on record to ascertain whether the appellants were duly found to be guilty as well as to ensure that the guilty does not escape the rigors of law. Court should refrain itself from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken.

14. Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State.



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15. This is a case of homicidal death of one Kalyanasundaram, aged 70 years. Investigation in this case was set into motion on the complaint given by Ganesan(PW1), son of the deceased Kalyanasundaram. As per the complaint, the occurrence took place on 20.09.2011 around 18.15 hours. While PW1 along with his father and son-in-law Senthilkumar(PW2) were proceeding towards their house through the land of the deceased near Thirupachethi Thidal. According to the complaint, the appellants who are brother and brother's son of the deceased came out from the sugarcane field and his brother(A2) hold the hands of the deceased and his brother's son(A1) after demanding share in the property attacked him with the bill hook marked as M.O.1 on the head and neck of the deceased causing instant death. The postmortem report marked as Ex.P9 disclosed the following external injuries:

- 1. An incised wound level 10cmx3cm with variable depth (3cm to 5cm depth) seen over the front of neck.*
- 2. Laceration 6cm x 2cm bone depth seen over the parieto occipital region.*
- 3. On dessection of the neck, an incised wound, neck muscles, right jugular vein, right carotid artery clearly cut.*

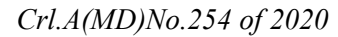


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4. *On opening of skull committed fracture measuring 5cm x 2cm seen over the occipital scalp contusion 8 cm x 3cm seen over the parieto occipital region of the skull. The postmortem doctor opined that the deceased would appear to have been died on shock and hemorrhage due to insized wound over the neck.*

16. The weapon used to cause the death identified by PW1 in the Court and marked as M.O.1. PW2, the son-in-law of PW1 has corroborated the evidence of PW1 substantially insofar as the overt-act of the accused persons and the injuries caused to the deceased by A1. The learned counsel for the appellants doubt their presence on the ground that if the two witnesses were really present at the time of occurrence, they would have tried to prevent the assault or atleast would have got the assailant. They both have not even tried to rescue the injured person. Absence of blood stain and non- recovery of their clothe makes their presence at the time of occurrence as deposed highly doubtful. The victim is father of PW1. Assailant is the paternal uncle of PW1. There is no necessity for PW1 to falsely implicate his paternal uncle unless and until the defense could strongly establish ill-motive



17. PW-10 (Dr.Senthilkumar) was conducted postmortem had the injuries found on the body of the deceased and as recorded in x.P9 might have been caused using M.O.1 since the description on is mentioned in the inquest report prepared at the scene of on 20.09.2011 between 19.45 hours to 21.31 hours. The learned hearing for the appellants submitted that M.O.1 which alleged to recovered on the next day could not be the weapon used for the of offence. It further creates doubt about the confession and his Court, after perusing the evidence of PW6-Gajendran, who is for recovery having not supported the case of the prosecution and ion of weapon at Column No.10 of the inquest report which e weapon used for the crime even before it was recovered from d as per the prosecution clearly disprove the case of the regarding the recovery of M.O.1.



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18. In view of this Court, this is a lapse on the part of the investigation and a clear outcome of defective investigation. However as mandated by the Hon'ble Supreme Court, the disturbing features in the process of investigation should not allow a guilty person got escaped from the rigors of law. Therefore, a proper evaluation of the various facts and circumstances and the credibility of PW1 and PW2 bound to be scrutinized dispassionately. While doing so, we find that the occurrence was taken place near the fields on the Tirupachethi Thidal Road. The question put to the witnesses in the cross-examination discloses property dispute between the brothers. The family members of the deceased were under constant fear of life threat which has made them to send PW2 to the field when the deceased and PW1 did not turn up. The evidence of PW1 and PW2 are wholly reliable and their evidence is corroborated through the medical evidence, namely postmortem report.

19. Minor contradiction like the time, the deceased left the home on that fateful day or the absence of blood stain in the clothe of PW1 and PW2 does not impeach the credibility of these witnesses since these are



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trivial in nature in the light of unimpeachable evidence of PW1 and PW2.

Ocular witness coupled with medical evidence prevail over the discrepancies mentioned by the learned counsel for the appellant. Therefore, this Court holds that the finding of the learned Sessions Judge supported by the reasoning and evidence has to sustain.

20. It is reported by the learned Additional Public Prosecutor that pending appeal, the second appellant died and he produced the death certificate before this Court. Since the second appellant/A2(Rajangam) died, this criminal appeal stands abated as against the second appellant.

**21. In the result,**

(i) This Criminal Appeal is **dismissed**. The judgment of conviction and sentence passed by the learned Principal Sessions Judge, Sivagangai in S.C.No.85 of 2014 dated 31.01.2020 stands confirmed.

(ii) The first appellant/A1 is directed to surrender before the trial Court within 15 days from today, failing which, he may be secured and



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committed to prison for undergoing the remaining period of sentence and the accused is entitled to set off the period already undergone by him in the prison.

**[G.J.,J] & [R.P., J]**  
**04.03.2025**

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
PJJ

To

1.The Principal District and Sessions Judge,  
Sivagangai.

2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**DR.G.JAYACHANDRAN, J.  
AND  
R.POORNIMA, J.**

PJL

**Judgement made in  
Crl.A(MD)No.254 of 2020**

**04.03.2025**