

Crl.A(MD)No.296 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 31.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)No.296 of 2024

Guruvaiah

... Appellant/sole accused

Vs.

The State rep. By
The Inspector of Police,
Sethur Police Station,
Virudhunagar District.
(in Cr.No.193 of 2020)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connected to the judgment in S.C.No.16 of 2021 on the file of the Additional Sessions Judge, Additional District and Sessions Court, Virudhunagar District at Srivilliputtur, dated 24.08.2023 and set aside the conviction and sentence imposed against the appellant.



WEB COPY



Crl.A(MD)No.296 of 2024

For Appellant : Mr.R.Prakash

For Respondent : Mr.E.Antony Sahaya Prabahar

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the accused/sole appellant in the judgment dated 24.08.2023 passed by the Additional Sessions Judge, Additional District and Sessions Court, Virudhunagar District at Srivilliputtur in S.C.No.16 of 2021 by convicting and sentencing the appellant for the offence punishable under Sections 302 and 506(ii) IPC and sentenced to undergo rigorous imprisonment for life and to pay a sum of Rs.1,000/- in default to undergo three months simple imprisonment under Section 302 IPC and to undergo rigorous imprisonment for seven years and to pay a sum of Rs.1,000/- in default to undergo three months rigorous imprisonment under Section 342 IPC and to undergo simple imprisonment for three months.



2. The case of the prosecution is as follows :

WEB COPY

(a) The complainant is the son of Laxmana Perumal, the deceased. The accused Gurvaiah is his brother. There were three brothers, namely Sundaraiah, Sivaraman (elder brothers) and Guruvaiah/accused (younger brother). The accused got married to one Gurubhagyam, but due to a misunderstanding, he had been living separately. The complainant and his other brothers had been living separately and likewise his parents had been residing separately. The accused, after being separated from his wife, did not come back to the residence and was instead roaming around the village. Ten years ago, his father had given a share of his properties to the complainant and his brothers. He did not give any property to the accused out of fear that he would sell the property and spend the money lavishly. He informed the complainant and others that he would give his share that was meant for accused to his daughters.

(b) One month ago, he had requested his parents to settle his share or threatened to kill the brother by showing a billhook while he was grazing cows. The complainant and his brother Sivaraman told him that if he lives with his family, then he would get his share and asked him to leave the place.



Crl.A(MD)No.296 of 2024

(c) Again on 06.05.2010, he came and demanded for his

share of partitioned land and threatened them with dire consequences.

His father, the deceased informed him that if he brings his wife, he will give the share. Again, accused threatened them with dire consequences and refused to bring his wife.

(d) On 07.05.2020 at about 14.40 hours, the complainant, his brother Sivaraman, mother, Muthulakshmi, his father, Lakshmanaperumal, and his wife and children were sitting in front of Masiamman Temple and were chatting. At that time, the accused Guruvaiah, came and demanded his father whether he would provide his share or not. In response, his father asked him to bring his wife and told that then he would hand over his share. The accused then stated that he should not live as he had failed to give him his share and attacked the deceased on the neck indiscriminately with bill hook which was hidden by him. When they raised alarm and tried to catch him, he threatened them with dire consequences and fled. His father died due to the injury sustained on his neck. They took him in an ambulance to the Rajapalayam Government Hospital, where the doctor had examined him and declared him brought dead. Hence, the complaint.



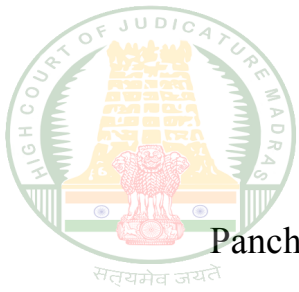
Crl.A(MD)No.296 of 2024

(e) After receipt of the complaint, Ex.P1, P.W.11,

Thiru.Tamil Mani, Sub Inspector of Police had registered FIR in crime No.193/2020 for the offence under sections 302 and 506(ii) IPC under Ex.P9 and had sent the same to the Judicial Magistrate, Rajapalayam through Grade-I Constable Thiru.Sitaraman and copies were sent to the Inspector of Police and other officials for further course of action.

(f) P.W.12 Thiru.N.S.Kumar, Inspector of Police, after receipt of the copy of FIR had gone to the place of occurrence on 07.05.2020 at about 19.30 hours and prepared observation mahazar Ex.P2, rough sketch Ex.P10 in the presence of witnesses, Ponnuswamy, Karthik Kumar, and recovered blood stained cement, ordinary cement under a recovery mahazar Ex.P3 in the presence of the same witness.

(g) He examined the witnesses, Thiru.Gopal, Tmt.Muthulakshmi, Tmt.Subbulakshmi, Tmt.Aanandam, Thiru.Ponnusamy, Thiru.Karthik Kumar and recorded their statements. He was unable to conduct inquest on the dead body due to late hours. On 08.05.2020 at about 8.00 hours he had conducted inquest on the dead body in the Government Hospital mortuary in the presence of



Crl.A(MD)No.296 of 2024

Panchayadhars and prepared inquiry report Ex.P11. He had sent the dead body for postmortem through Grade-I Constable, Thiru.Esakki Muthu 2879 along with a requisition.

(h) Thereafter, he had arrested the accused near Sethur Bus Stand in the presence of the Village Administrative Officer Thiru.Ganesan, Village Assistant Thiru.Thavidan, and recorded his confession statement under and Ex.P4 and recovered the blood stained bill hook M.O.1 in a seizure mahazar under Ex.P5 in the presence of the same witnesses. Thereafter, he had gone to police station along with accused and recovered the blood stained Lungi- M.O.4 from the accused under recovery mahazar Ex.P6. He had sent the accused to the judicial custody.

(i) He had recovered the blood stained dresses worn by the deceased,viz., 1.blood stained half-hand sandal colour shirt – M.O.5, blood stained blue, white and brown colour lungi -M.O.6, a piece of gauze cloth with control blood sample of the deceased M.O.7, through P.W.10, Thiru.Esakki Muthu, Grade-I Constable 2879 in Form 95.



Crl.A(MD)No.296 of 2024

(j) He examined the witnesses Gurusami, Hemlatha, Iyyanar,

WEB COPY

Abirami, Pandi, Thalaimalai and recorded their statements. He also examined Dr.Arun and received the accident register Ex.P12 and recorded his statement.

(k) He had sent a requisition letter to the Chief Judicial Magistrate with a request to record the statement of witnesses Gopal, Muthulakshmi, Subbulakshmi, Anandam under section 164 Cr.P.C. On 23.06.2022, the Judicial Magistrate No.II, recorded the statement of the witnesses under section 164 Cr.P.C.

(l) He had sent the recovered material objects to the Forensic Laboratory, Ramanathapuram through the Judicial Magistrate. He examined the Scientific Officer, Dr.Aadhi Devi and received the forensic lab report under Ex.P13 and recorded her statement.

(m) He examined P.W.8 Dr.Parthiban who had conducted postmortem on the dead body and recorded his statement.

(n) P.W.8 Dr.Parthiban, in his report explained the injuries sustained by the deceased as follows :



WEB COPY



Crl.A(MD)No.296 of 2024

“1) 20 x 3 x 3 செ.மீ அளவிளான ஒரு வெட்டுக்காயம் வலது காதின் முன்பாக காதை இரண்டாக பிளந்து தலையின் நடுப்பகுதி வரை காணப்பட்டது.

2) 15 x 5 x 4 செ.மீ அளவிளான ஒரு வெட்டுக்காயம் முதல் காயத்தின் கீழ் காணப்பட்டது. இரண்டாவது காயத்தின் கீழ் மண்டை ஒரு பிளந்து காணப்பட்டது.

3) இடது கண் புருவத்தின் மேல் ஒரு சிதைந்த காயம் 3 x 2 x 3 செ.மீ அளவில் காணப்பட்டது.”

(o) P.W.12, Thiru.N.S.Kumar, the Investigating officer examined witnesses Sitaraman, Thirupati, Head Cleark and recorded their statement. Since he was transferred, he had handed over the file to the Inspector of Police Thiru.Nidhi Kumar and left.

(p) P.W.13, Thiru.Nithi Kumar had taken the file and further investigated the matter. He examined the witness, Murugesan, Forensic Laboratory Officer on 08.08.2020 and received report Ex.P13, and examined Thiru.Muthu Vijayan, Grade-I Constable 928 and recorded his statement. He had completed the investigation and filed final charge sheet against the accused.



Crl.A(MD)No.296 of 2024

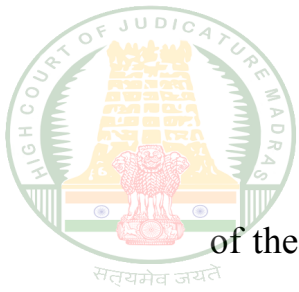
3. After perusing the records, the Judicial Magistrate,

WEB COPY Rajapalayam had taken up the case in P.R.C.No.11 of 2020 and issued summons to the accused. After appearance of the accused, copies of all the prosecution documents were furnished to him free of cost under Section 207 Cr.P.C. Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate had committed the case records to the Principal District Judge, Virudhunagar District at Srivilliputtur under Section 209(A) Cr.P.C for further action.

4. The Principal District Judge, Virudhunagar District at Srivilliputtur had received the case records and numbered as S.C.No.16 of 2021 and made over the case to the Additional Sessions Court, Srivilliputtur for trial.

5. After receipt of the case, the learned Additional Sessions Judge, after perusing the records, framed charges against the accused under Sections 302 and 506(ii) IPC, read over the same and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

6. In order to prove the case of the prosecution, on the side



Crl.A(MD)No.296 of 2024

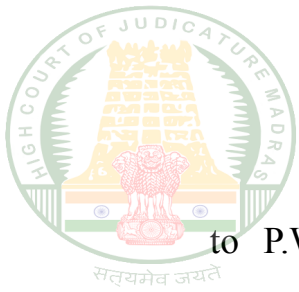
of the prosecution, P.W.1 to P.W.14 were examined and Ex.P1 to Ex.P15 were marked and Material Objects M.O.1 to M.O.7 were produced. On the side of the accused, no witness was examined.

7. After full trial, the trial Court convicted the accused under Sections 302 and 506(ii) IPC, for the offence punishable under Section 506(ii) of IPC, sentenced him to undergo seven years rigorous imprisonment and to pay a sum of Rs.1,000/- and in default, to undergo three months simple imprisonment, and for the offence under Section 302 IPC, sentenced to undergo imprisonment for life and to pay a sum of Rs. 1,000/- in default, to undergo three months simple imprisonment, against which, the present Criminal Appeal is filed on the following among other grounds:-

(i) That the impugned judgment is against the law and weight of the evidence and therefore, it is liable to be set aside.

(ii) That the trial Judge ought to have considered that the evidence of prosecution is not sufficient to prove prosecution case and Ex.P1 complaint is not a genuine one and the same was fabricated one and the real complaint was suppressed.

(iii) That the Trial Judge ought to have considered that P.W.1



Crl.A(MD)No.296 of 2024

to P.W.6 were family members of the deceased. Henceforth, their evidence ought not be taken into the consideration as conviction cannot be only based on the evidence of the interested witness.

(iv) That the Trial Judge ought to have considered that the other witnesses are Doctors, Experts and Police official and the evidence given by them as documentary evidence marked through them does not link the accused with the charges levelled against him.

(v) That the Trial Judge ought to have considered that the *mens rea* to commit the offence is not proved by any prosecution witness.

(vi) That the Trial Judge ought to have considered that no independent witness deposed against the appellant and that the conviction was only based on interested witnesses.

Hence, he prayed to set aside the judgement of the trial court and to acquit the accused from all charges.

8.The Additional Public Prosecutor appearing for the State, argued that the evidence of eye witnesses corroborated each other, their evidences are consistent, credible and trustworthy and hence, the offence against the accused was proved by the prosecution beyond all reasonable doubt. Hence, he prayed for dismissal of the Criminal Appeal.



Crl.A(MD)No.296 of 2024

9.Heard the learned counsel on either side and perused the evidence on record.

10.Now this court has to decide whether the judgement rendered by trial Court is proper or liable to be set aside ?

11.On careful perusal of the entire records, the prosecution case unfolded from the evidence of P.W.1 to P.W.14 is as follows:

(a) P.W.1/complainant, alleged to be an eyewitness deposed that the occurrence had taken place on 07.05.2020. One month prior to the occurrence, the accused had created problem with his father regarding partition of the property and threatened him with dire consequence, for which his father asked him to bring his wife and children and told him that only then he would give his share. Thereafter, the accused did not visit the house for 20 days. One day prior to the occurrence the accused had requested his father to partition the property, for which his father asked him again to bring his wife and children and he would give his share thereafter. The accused threatened him with dire consequences by stating that he would kill him within two days.



Crl.A(MD)No.296 of 2024

(b) On 07.05.2020, after finishing his work, P.W.1 had

WEB COPY

lunch in his house and at about 02.30 hours, he saw the accused consuming liquor. He informed the same to his parents and cautioned them not to talk to him. He was sitting with his brother Shivaraman, his wife, Subbulakshmi, his mother, Muthulakshmi, his father, Laxmanaperumal, his sister-in-law chatting but failed to note that the accused, had come from east to west. His father was sitting 5 feet away from them. The accused had asked him whether he would partition the property or not, his father asked him to bring his wife and children, and then he would give his share. The accused shouted at his father and claimed that he should not live as he had failed to share the property and took a bill hook which was hidden by him and inflicted injury on the right ear. Immediately they rushed to the spot and found that his father was lying in a pool of blood. Again the accused inflicted injury on the backside of his head. They tried to catch him, but he threw the bill hook and fled away. Thereafter, the complainant and his brother Shivaraman had gone to Sethur Police Station to lodge a complaint, but on the way to police station, they had found an ambulance. They brought it to the place of occurrence and sent his father to the Rajapalayam Government Hospital. The Doctor examined him and declared that he was brought



CrI.A(MD)No.296 of 2024

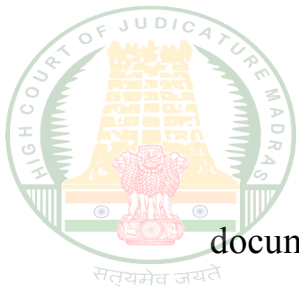
dead. Therefore, he had lodged the complaint Ex.P1. He Identified the weapon bill hook M.O.1.

(c) Tmt.Muthu Lakshmi, wife of the deceased and mother of the accused was examined as P.W.2. She had also corroborated the evidence of P.W.1.

(d) P.W.3, Tmt.Muthulakshmi, wife of P.W.1 and P.W.5 Tmt.Hemalatha, niece of the accused and granddaughter of the deceased Laxmanaperumal also corroborated the evidence of P.W.1 and P.W.2.

(e) Tmt.Anandam, daughter-in-law of the deceased was examined as P.W.4. She had also corroborated the evidence of P.W.1 to P.W.3.

12. The evidence of eye witnesses corroborates with each other. Their evidence is consistent, credible and trustworthy. It is not proved by the defence counsel that they had motive to falsely implicate the accused in a false case. The only defence taken is that the accused was mentally ill and that his brothers swindled the property, for which no



Crl.A(MD)No.296 of 2024

document or evidence was produced by the learned counsel for the appellant.

13.Further the evidences of P.W.1, P.W.2, P.W.3, P.W.4 were recorded by the Judicial Magistrate under section 164 Cr.P.C. In the above statement also, all the witnesses in one voice stated that they had witnessed the occurrence, and the offence was committed by the accused.

14.The learned counsel for the appellant argued that P.W.1 to P.W.6 were family members and are interested witnesses and the conviction cannot be solely on the basis of their testimonies. He argued that the failure to examine independent witness was fatal to the prosecution case.

15.In the various judgments of our Hon'ble High Court and the Hon'ble Apex Court, it has been held that the conviction based on interested eye witnesses does not automatically mean that their evidence should be discarded. It is the duty of the Court to evaluate such testimony and if the court is satisfied that their evidence is found to be credible and corroborated by other factors, conviction can be based on their evidences.



Crl.A(MD)No.296 of 2024

16.In this case, the evidence of witnesses corroborated with

each other and are cogent and credible. Their evidence was also supported by medical evidence. Further, the Investigating Officer had recovered the material objects, viz., the weapon used for the offence, blood stained bill hook-M.O.1, seized the blood stained Lungi worn by the accused – M.O.4, recovered the dresses from the dead body of the deceased viz., blood stained sandal colour half slack shirt – M.O.5, blue and brown colour striped Lungi with blood stains-M.O.6, a piece of gauze cloth with control blood sample of the deceased M.O.7, blood stained cement piece and sent it to chemical analysis. Ex.P13 reveals the blood stains found on all the items. The serology report was not marked by the prosecution. However, Ex.P13 reveals that the weapon seized from the accused and the dress worn by the accused were found with blood stains.

17.The Motive for the crime was spoken by the eyewitnesses. The mother of the accused also stated that the accused had pressurised his father to partition the property. Since he has his wife and children, his father also wanted to give the share to them and requested to bring them with him. Without listening to the words of his father, he had



Crl.A(MD)No.296 of 2024

WEB COM

developed enmity with him. On the date of occurrence, with an evil intention to kill him, he came to the place of occurrence with the weapon and demanded partition. When the same was refused by his father, he attacked his father with the bill hook-M.O.1 a dangerous weapon on his head, knowing that when attacked on the head, it could result in serious harm. The attack made by him was ordinarily sufficient to cause death. The guilt of murder under Section 300 IPC is proved against him and therefore he is liable to be punished under section 302 IPC. The prosecution clearly proved the guilt of the accused beyond all reasonable doubt.

18.The trial judge after taking into account of all the relevant materials held the accused guilty for the offence and punished the accused for the offence under Sections 302 and 506(ii) IPC and there is no interference required to set aside the above judgement of the trial Court.

19.We conclude that on careful perusal of entire records, there is no material available to interfere with the judgment of the trial Court. The Criminal Appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.



Crl.A(MD)No.296 of 2024

WEB COPY

20. Accordingly, the Criminal Appeal stands dismissed. The judgment, dated 24.08.2023 passed by the Additional Sessions Judge, Additional District and Sessions Court, Virudhunagar District at Srivilliputtur, in S.C.No.16 of 2021 is confirmed.

(G.R.S., J.) & (R.P., J.)
31.01.2025

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

RM

To

- 1.The Additional Sessions Judge,
Additional District and Sessions Court,
Virudhunagar District at Srivilliputtur,
- 2.The Inspector of Police,
Sethur Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.296 of 2024

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
Crl.A(MD)No.296 of 2024

31.01.2025