



Crl.A(MD)No.822 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2025

Pronounced on : 03.03.2025

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl. A(MD)No.822 of 2022

and

Crl.M.P(MD)No.14336 of 2024

Thirukumaran

.. Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Kadayam Police Station,
Thirunelveli District.
(Crime No.530/2020)

.. Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 29.08.2022 in S.C.No.409 of 2021 on the file of the learned Principal Sessions Judge, Tirunelveli.



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For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.M.Mohammed Ali

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
assisted by
Mr.C.Mayilvahana Rajendran

JUDGMENT

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

This is a case of patricide.

2. Mr.Thirukumaran, the appellant herein is the son of Thangaraja, born to his first wife Vellaiammal.

3. In S.C.No.409 of 2021, on the file of Principal Sessions Judge, Tirunelveli, the learned Sessions Judge convicted Thirukumaran for offences under Section 294(b), 302 and 506(ii) IPC. The motive for the crime is alleged to be the dispute between the father (deceased) and his son (accused) regarding the use of the pathway running through the land of the



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deceased.

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The substance of charges framed against the accused/appellant:

4. On 26.11.2020 at about 11.00 am, the accused damaged the barbed wire fence of Thangaraja field and took the tractor loaded with haystack through the land of Thangaraja. This was objected by Thangaraja. He warned the accused not to use the pathway in his land. On the next day ie., 27.11.2020 at about 16.00 hrs, again the accused carrying haystack came through the pathway in Thangaraja land. At the same time, Thangaraja, his second wife Shanmugasuntha and their son Sreeram Vinoth Raja were returning back to home after completing the work in the field. On seeing the accused, Thangaraja reprimanded the accused for using the pathway. The accused claiming right in the pathway, abused Thangaraja as old man and bastard. Then took out the knife concealed on his back and attacked Thangaraja on his head first, then cut on the neck and shoulder repeatedly. On hearing the scream of Thangaraja, Shanmugasuntha and her son Sreeram Vinoth Raja tried to rescue the injured. The accused wielded the knife and threatened them 'if they come close, he will kill them'. After intimidating them, the accused ran away.



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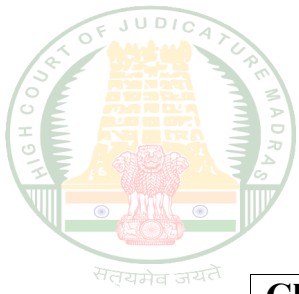
Evidence and finding:

5. To substantiate the charges, prosecution marshalled 19 witnesses, 28 exhibits and 13 material objects. On the defence side, no document or oral evidence.

6. The key witnesses for the prosecution are Tmt. Shanmugasuntha (PW-1) the second wife of Thangaraja and her son Sreeram Vinoth Raja (PW-2), who were accompanying the deceased when he was assaulted by the accused. Besides the prosecution has also examined Kuchamudaiyan (PW-4) the neighbouring land owner and two chance witnesses, Murugesan(PW-5) and Lakshmanan (PW-6) and happened to witness the occurrence while crossing the scene of crime when they came to purchase saplings.

7. The trial court believed the prosecution evidence and convicted the accused. He was sentenced as below:-

Charge 1: Offence u/s 294(b) of IPC	3 months SI and Rs.1000/- fine. In default, 30 days SI.
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Charge 2: Offence u/s 302 IPC.	Life imprisonment and fine of Rs.5000/-. In default, 3 years RI.
Charge 3: Offence u/s 506(2) IPC.	5 years RI and fine of Rs.1000/-. In default, 19 months RI.

8. The learned Senior Counsel for the appellant submitted that the appellant is innocent and he had been fixed by PW-1 and PW-2 to grab his property. The deceased had multiple enemies in the village. On the complaint given by the villagers, proceedings pending against him for encroaching government land. Multiple injuries of different dimension found on the deceased body could not have been caused by a single person. The place of occurrence not established beyond doubt. The Investigating Officer has failed to explain the chain of custody of the body from the scene of occurrence to mortuary. The trial Court erred in not considering the vital omission. Hence pleaded that the conviction and sentence has to be set aside for the following reasons:-

i) The motive attributed for the crime disproved by the defence through cross examination of PW-1 who admits that even after marrying her as second wife, the deceased used to visit his first wife ie., the mother of the accused. For more than 22 years, the deceased was living with his second



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wife and children. PW-1 states that out of 40 acres of land, the deceased gave 15 acres of land to the first wife and settled the remaining land to her two sons. The division has happened several years ago. According to the prosecution, the immediate provocation was the objection to the accused for using the deceased pathway to reach the land of the accused. The day before occurrence, the accused removed the wire fence and drove the tractor carrying haystack load. On the day of occurrence, the accused was carrying haystack on his head and passing through the pathway. However, the sketch marked as Ex.P-15 does not find any haystack near the scene of crime. There is no damaged wire fence shown in the S.No.38/3. Neither pathway in S.No.38/3 nor land of the accused nearby S.No.38/3, to necessitate him to use it, shown in the sketch. Likewise in the observation mahazar marked as Ex.P-2 also, the above features which are relevant to prove the prosecution case conspicuously missing.

ii) The occurrence alleged to have taken place on 27.11.2020 at about 16.00 hrs in the land bearing S.No.38/3 owned by the deceased. The distance between the scene of occurrence and police station is only 4 km.

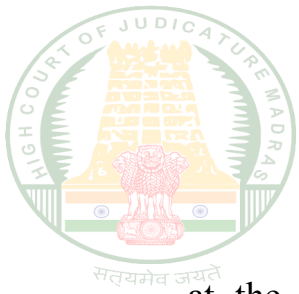


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However, PW-1 who claims to be an eye witness to the occurrence had informed the police only at 18.30 hrs. She has not given any explanation for the delay. Likewise, the express FIR had reached the Judicial Magistrate only at 11.15 hrs. As per the evidence of Chandran, Grade-I, Police Constable (PW-14), he received the passport (Ex.P-10) along with the FIR at 7.00 pm and delivered it to the Judicial Magistrate at 11.15 hrs. from Kadayam Police Station one can reach the Judicial Magistrate Quarters by 30 minutes in a two wheeler. The delay of more than 4 hours in forwarding the express FIR to the Judicial Magistrate not properly explained.

iii) PW-1 and PW-2 are interested witness and their presence at the time of occurrence is highly doubtful. PW-1 in the cross examination had admitted that the deceased had leased out his land and the land lay barren without any cultivation. Therefore, the case of the prosecution that PW-1 and PW-2 along with the deceased on 27.11.2020 were returning back home after working in the field cannot be believed. PW-2/the son of the deceased is not even able to say about the direction or simple detail about the scene of crime to believe that he was present at the scene of crime



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at the time of occurrence. Arumugam (PW-3) is the only independent witness for prosecution, but he turned hostile. Further, the presence of PW-3 and PW-6 at the scene of crime to witness the occurrence not mentioned in the complaint-Ex.P-1. Hence, PW-4, PW-5 and PW-6 who claims to have seen the occurrence being close related to the deceased are interested witnesses and their presence at the time of occurrence is highly doubtful.

iv) The version of the prosecution regarding the arrest, confession and seizure of material objects from the accused are not supported by the witnesses PW-10 and PW-11. According to the prosecution document, the observation mahazar-Ex P-2 and seizure mahazar Ex.P-3 were prepared between 7.45 pm to 8.45 pm on 27.11.2020. The corpse of Thangaraja was not at the scene of crime at the time of preparing these two documents. PW-18 (Seethalakhmi), who had taken the photographs of Thangaraja had deposed that she went to the scene of crime along with Investigating Officer and on his instruction, took the photos Ex.P-13 between 7.00 pm to 7.15 pm. Contrarily, from the deposition of PW-19, it is evident that he reached the scene of crime only at 7.30 pm



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along with PW-18 (Seethalakhmi). The body was seen at the mortuary only on the next day at about 7.00 am at the time of inquest. The person who removed the body from the scene of crime, the mode of transporting the body, the passport for admitting the body in the mortuary and the time of receiving the body at Mortuary are not disclosed by the prosecution.

9. Therefore prayed to reverse the judgment of conviction and acquit the appellant by holding the prosecution failed to prove the guilt of the accused beyond doubt.

10. The learned Additional Public Prosecutor assisted by the counsel for PW-1, submitted that there is direct evidence for the crime and the eye witnesses had deposed about the occurrence without any major discrepancies. PW-1 and PW-2 are the wife and son of the deceased. The incident happened on 27.11.2020 at about 16.00 hrs. Information about the crime by way of written complaint is made by PW-1 after her second son came on hearing the incident. Soon after the registration of the complaint at about 18.30 hrs, Investigating Officer had taken up the investigation and

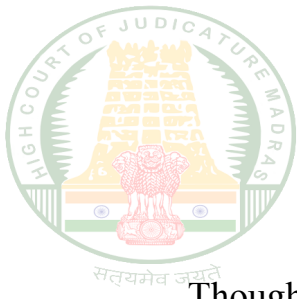


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went to the spot by 7.00 pm. Scene of crime was identified by PW-2. Sketch, observation mahazar and seizure of soil with blood stain and without blood stain were collected under mahazar. The blood group (A-Group) found in the soil collected from the scene of crime tally with the control sample of the deceased. Further, the blood strained clothe of the accused found with A group blood. Therefore apart from eye witnesses, the prosecution through scientific evidence like serology report (Ex.P-28) had proved the guilt of the accused beyond any reasonable doubt.

11. The custody of the corpse of Thangaraja explained by PW-19. He soon after receipt of the information instructed to remove the body since it was lying in a forest area where movement of wild animals prevalent. Seethalakshmi (PW-18) after taking photographs removed the body to the Government Hospital at Thirunelveli. The identity of the deceased is well established and the injuries on him are proved to be caused by the accused using M.O.3. The recovery of the weapon used to commit the crime on the disclosure of fact by the accused is admissible in evidence. The blood stains found in M.O.3 found to be of same group of the deceased.



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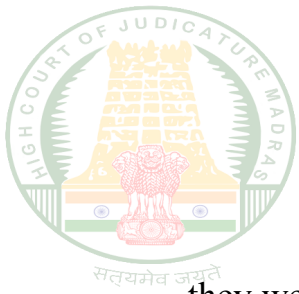
Though confession and recovery mahazar witnesses had not supported the case of the prosecution, the case of the prosecution cannot be disbelieved when the other overwhelming and un-impeached evidence in the form of direct eye witness available.

12. Heard Mr.V.Kathirvelu, learned Senior counsel appearing for the appellant and Mr..E.Antony Sahaya Prabahar, learned Additional Public Prosecutor appearing for the State.

13. When the prosecution casee relies on the circumstantial evidence establishing motive become significant. However, if the case is based on direct evidence, the absence of motive does not necessarily weaken the posecution case.

14. The case of direct witness to the crime:

Three category of witnesses have seen the occurrence. PW1 and PW2 are the wife and son of the deceased. According to their testimony,

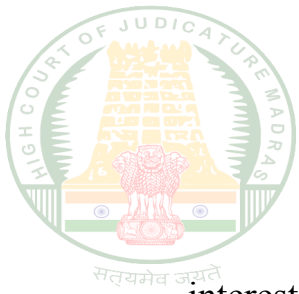


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they were returning back to the home along with the deceased. The presence at the scene of occurrence doubted by the defense citing minor contradictions. Since they have not spoken anything about the deceased after the brutal attack and absence of blood stain in their clothes which could have naturally happened if they were at the scene of occurrence and if tried to save the deceased. Conduct of a person in a given circumstances cannot be uniform or same. On witnessing the brutal attack by the accused, they have screamed. Hearing their scream, PW4-Sutchamudaiyar had rushed to the place. He come under the second category. He has also witnessed the accused causing cut injury on the deceased over his head and neck. He has stated that PW1 fainted on seeing the occurrence which evidence is quite natural and wholly acceptable.

15. The third category of witnesses is PW5 and PW6. They both are brothers hailing from neighbouring village. They have come to the occurrence village for purchase of sapling. On the way, they have seen this occurrence. The point canvassed by the defence is omission to mention the presence of PW6 by the other witnesses. Particularly, by PW1, PW2, as well as PW5. All these witnesses are related to the deceased and thereby



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interested in the outcome of the prosecution. No doubt PW5 and PW6 are brothers and they are chance witnesses. Though they admit that they are related to Murugesan, this Court on considering the evidence of PW1 and PW2 who were accompanying the deceased before he was done to death, find that their evidence is highly reliable and not been impeached through cross-examination. There is no reason for them to fix the appellant falsely. Though the learned counsel for the appellant would submit that to knock away the 15 acres of lands given to the accused mother he has been falsely implicated in this case, such a defence and explanation appears to be highly preposterous and baseless.

16. The learned Senior counsel for the appellant also tried to harp on the delay in forwarding the FIR to the Judicial Magistrate. In this regard, the explanation of Chandran(PW14) requires consideration. The FIR handed over to him at 7.00 pm to be delivered at Judicial Magistrate Court, Ambasamuthiram. Being COVID Pandemic, there was restriction of movement and the Magistrate was at her residence. Hence, it has taken nearly 5 hours for him to deliver the express FIR.



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17. Taking into consideration the explanation given, the Court has no suspicion of any manipulation in the FIR due to the said delay. In this case, strictly the prosecution has failed to provide the evidence regarding the corpse which was lifted from the scene of crime and handed over to the mortuary at Tirunelveli Government Medical College Hospital. Since the learned Senior counsel appearing for the appellant heavily harped on its *lacuna* and submitted that the absence of *corpus delicti* from the scene of crime and failure to explain the chain of custody creates doubt about the scene of occurrence as well as time of occurrence. Hence, the benefit of doubt to be extended to the appellant.

18. This Court, for clarification, listed the case on 25.02.2025 and addressed the Dean, Government Medical College Hospital, Tirunelveli to produce the Mortuary Register. Accordingly, Mr.N.Shyam Sundar singh, Chief Civil Surgeon, Medical Officer of Tirunelvlei Medical College Hospital appeared in person before the Court and produced the Mortuay Register.



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19. The perusal of the mortuary register reveals that the body of

Thangaraj aged 66 years as on 2020 was brought to the mortuary by Mr.T.Kannan, Head Constable, Kadayam Police Station on 27.11.2020 at 22.35 hours. The said Kannan been examined as PW16. He had deposed that he handed over the body of Thangaraj at Tirunelveli Government Medical College Hospital for postmortem. No doubt the prosecution has omitted to mark the passport. In the opinion of this Court, the said omission is not fatal to the case of the prosecution since the identity of the dead person is not in dispute neither the chain of custody could be doubted since the hospital record, namely, the Mortuary Register indicates that the corpus was received at mortuary on 27.11.2020 at 22.35 hours. The postmortem report disclosed the following external injuries:

1. A horizontal gapping cut injury of size 13 x 1cm x Bone deep in left side of forehead and left parietal region.
2. A horizontal gapping cut injury of size 10 x 1cm x Bone deep in right parietal region.
3. A horizontal cut injury of size 14 x 2cm x Bone deep in right side of back of head. Scalp found cut.
4. A horizontal gapping heavy cut injury of size 25x2x 9cm noted in back of right side of neck to left side of neck. Underlying soft tissues, vessels, nerves, back of 2nd



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cervical vertebra and spinal cord found cut.

5. A horizontal gapping heavy cut injury of size 25x2x9cm lies 0.5cm below injury no.4. Underlying soft tissues, vessels, nerves, back of 2nd cervical vertebra and spinal cord found cut.
6. A horizontal gaping cut injury of size 15x1x2cm lies 0.5cm below injury no.5. Underlying soft tissues found cut.
7. A horizontal gapping cut injury of size 6x1x1cm lies below left side of injury no.6. Underlying soft tissues found cut.
8. A flapping cut injury of size 6x1x1cm in left temporal region region behind left ear. Scalp found cut.
9. An oblique gaping cut injury of size 8 x 2cm x Bone deep lies 2cm above injury no.8. Underlying scalp and skull bone found cut.
10. An oblique gaping heavy cut injury of size 17 x 2cm x Brain deep lies 2 above injury no.9. Underlying scalp, skull, dura a brain (left temporal and parietal lobes) found cut.
11. A horizontal cut injury of size 6 x 1 x 1cm lies in back of left shoulder.
12. Abrasion of size 2 x 1 cm over outer aspect of left upper arm.
13. A vertical incised wound of length 6 cm noted in outer



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aspect of upper part of left upper arm.

14. Abrasion of size 6 x 1cm in top of right shoulder.

20. PW1 and PW2 in their evidence had identified the appellant as the assailant and had spoken about the manner in which he caused the injury. The weapon used was recovered based on the confession given by the accused. No doubt the witnesses to the confession and recovery have turned hostile, but the fact the blood stains collected from the weapon tested and found to be A-Group blood which is the blood group of the deceased remains proved. The weapon identified by PW1 and marked as M.O.3. The scene of crime identified by PW2 and from the scene of occurrence, blood stained soil is collected. The blood stained soil found to contained A-Group human blood. The controlled sample of the deceased blood also belongs to A-Group. These facts are found from the serology report marked as Ex.P27 and Ex.P28. Hence, there could be no doubt about the scene of occurrence, the weapon used and the assailant.



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21. In the light of the evidence, this Court holds that the prosecution has proved the guilt of the accused beyond reasonable doubt and hence, the trial Court judgement of conviction and sentence stands confirmed. This Criminal Appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

[G.J.,J] & [R.P., J]
03.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
P JL

To

1.The Principal Sessions Judge,
Tirunelveli.

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

**Predelivery Judgement made in
Crl.A(MD)No.822 of 2022**

03.03.2025