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Crl.A.No.320 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2026

CORAM :

**THE HON'BLE MR. JUSTICE P.VELMURUGAN
and
THE HON'BLE MR. JUSTICE M.JOTHIRAMAN**

Crl.A.No.320 of 2019

Mariyammal ... Appellant / defacto complainant / PW1
Vs.

1.The State rep. by
Inspector of Police,
Tirupattur Town East Police Station,
Tirupattur, Vellore District. .. Respondent No.1 / complainant

2.Sobana
3.Arvinth ... Respondent Nos.2 and 3 /
Accused 2 and 3

PRAYER: Criminal Appeal filed under Section 374 (3) of Criminal Procedure Code, 1973 praying to set aside the judgment dated 10.10.2018 of the learned III Additional District and Sessions Judge, Tirupattur, Vellore District in SC.No.201 of 2017, acquitting the respondents 2 and 3 / accused 1 and 2 under Section 235(1) of the Code of Criminal Procedure, 1973 and to set aside the same.

For Appellant : M/s.K.R.Santhakumari
For Respondents : Mr.A.Damodaran
Additional Public Prosecutor
Assisted by
Ms.M.Arifa Thasneem for R1

Mrs.A.Shabnam Banu,
Legal Aid Counsel for R2 and R3



JUDGMENT

(Judgment of the Court was made by M.Jothiraman, J.)

PW1 / defacto complainant has preferred this criminal appeal, challenging the judgment of acquittal dated 10.10.2018 passed by the learned III Additional District and Sessions Judge, Tirupattur, Vellore District in SC.No.201 of 2017, acquitting the respondents 2 and 3 / accused 1 and 2 for the offences under 120(B), 302, 302 r/w. 201 and 302 r/w. 109 IPC.

2. Brief case of the prosecution is as follows:

2.1. PW1 - Mariyammal is the sister of the deceased. A1 is the wife of the deceased. A2 is the paramour of A1. On 30.03.2016, the deceased returned to home after completing his work, had his dinner at 9.00p.m. and he had gone to his bed. After some time, the deceased was vomiting and calling PW1, his sister. She came out from her room and reached the room where A1 is residing. When PW1 asked A1 why his brother was shouting, for which A1 replied that he was in drunken mood and shouting and told that if he sleeps well, he would be alright and also told PW1 to go to bed.



2.2. On the next day on 31.03.2016, when PW1 woke up from the bed and came out, she saw that the deceased was lying on a matt, suffering from fits. Hence PW1 called others for help and brought the deceased to the Government Hospital, Tirupattur. Doctors informed that her brother was already died. They brought the body of the deceased to home and then, as per their customs, they buried the body of the deceased.

2.3. PW1 further deposed that after completion of 40 days ceremony, A1 had gone to her parents' home. On 05.06.2016 at 4.00 p.m., A1 returned with his children to her matrimonial home. At about 9.00 p.m. on the same day, PW2 who is the son of the deceased had come to PW1 and told that some male person was talking with his mother / A1. PW1 went to her brother's / deceased room wherein she saw A2 was talking with A1, but A1 asked PW1 why she had come there and told her to go out. PW1 came out from that place / room, locked the doors, came to the first floor and brought Tvl.Egaraj, Murugan, Praveen, Prem, Divyanathan and Sagayamary to the third floor, opened the doors and had shown A2 to all. When they enquired, A2 told that he was called by A1 and hence he came. A2 informed that they murdered the deceased, for that A1 gave him Rs.15,000/- to purchase poison. They caught hold A1 and A2, brought



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them to the police station and PW1 lodged a complaint under Ex.P1. PW1 also gave statement under Section 164 CrPC – Ex.P2 before the learned Judicial Magistrate, Thirupathur.

2.4. PW2- Daniel is the son of the deceased and A1. He deposed that his father died on 31.03.2016 at 6.00 a.m. A day before his death, his father came home after completing his work at night and after changing dress, he had dinner. At that time, A1 took a bottle from the slab, poured something in a 7up Bottle and gave to the deceased. When PW2 and his sister / PW3 asked A1 what did she mix, A1 told them that their father was suffering from stomach pain and hence, she gave medicine. After drinking the same, his father was suffering from loose motion and he had thrown the things which are all near to him on A1 and asked “what did she give”, “what did she give”. But A1 did not say anything and she started to wash the clothes of his father. Then A1 sent PW2 and his sister / PW3 to bed to sleep. On the next day morning, when he woke up, he saw his father was suffering from fits and his uncle Murugan, Yogaraj and his brother and others, brought his father / deceased to hospital, but they returned only with the dead body of his father.



2.5. Three months later, A2 started to come to his house and when he came, A1 make the kids to sleep at upstairs and told that they should not come out and also threatened them that some ghost was there. Often A2 would come to A1's house at night hours. One day, PW2 told about the visit of A2 to A1's house to their aunt / PW1-Mariammal and she caught hold of him and gave complaint to police. PW2 gave statement before the learned Judicial Magistrate under Ex.P3.

2.6. PW3- Jensi priya is the sister of PW2 and she deposed in similar version of PW2. She gave statement before the learned Judicial Magistrate under Ex.P4.

2.7. PW4- Therasa is the sister of PW1. She deposed that on 31.03.2016, PW1 informed that their brother was not doing well, suffering stokes and heart attack. Immediately PW4 had come to Thirupathur wherein she saw the dead body of his brother. Two months later, on 05.06.2016, PW4 heard some shouting sound from upstairs and she went to upstairs where A2 was standing on the side of wardrobe and when asked he told that he was in connection with A1 for the past 3 months.



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She gave statement before the learned Judicial Magistrate under Section 164 CrPC under Ex.P5.

2.8. PW5- Sagayamary deposed in similar version of PW1. PW6- Tr.Anthony, father of the deceased, deposed that two years prior, A1 and A2 gave poison to his son and he died. He gave statement before the learned Judicial Magistrate under Ex.P6.

2.9. PW7- Tmt.Magimaimary deposed in similar version of PW5. The deceased is the junior paternal uncle of PW7. PW8 – Tr.Divyanathan is the brother of the deceased deposed that two years prior to the occurrence, on one day he heard noise from downstairs and when she came down noticed that the deceased was taken to the hospital, but her brother died. Two months later, his sister caught hold A2 and on enquiry, he came to know that A1 and A2 gave poison to the deceased. They produced A1 and A2 before the police.

2.10. PW9- Tr.Murugan deposed that on 31.03.2016 at 6.00 a.m., since the deceased was not doing well, they brought him to the hospital. In the hospital he died. Two months later on 05.06.2016 at 10.00 p.m. PW1



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came and called him that someone is hiding inside the house of the deceased. They went upstairs and caught A1 and A2. On enquiry, A2 told that as per the instructions of A1, he bought poison, for which she gave Rs.15,000/- and by administering poison in liquor, A1 murdered her husband. They produced A1 and A2 before the police.

2.11. PW10- Tr.Yogaraj also deposed on similar lines as that of PW9. PW11 deposed about the preparation of Observation Mahazar under Ex.P7 and Rough Sketch – Ex.P19 and he signed as a witness.

2.12. PW12-Tr.Sivakumar, Village Administrative Officer deposed that on 08.06.2016, when he and his assistant Tr.Kumar were in office at 10.30 a.m. A1 and A2 came to their office and told that they killed the deceased and hence, they surrendered before him. A1 and A2 gave statements and it was recorded separately under Ex.P8 series and handed over them to the Tirupathur Town Police Station along with their statements recorded. The accused were arrested by police and on enquiry, they voluntarily gave confessional statement and the same has been recorded. In pursuance to the confessional statement, A1 took them to A1's house and from the bedroom he identified and handed over M.O.1-



Insecticide Poison Box and the same has been seized under Seizure Mahazar – Ex.P9, in which they signed as witness. A2 took them to Kandhili V.R.S. Pesticide Shop, where he bought the poison.

2.13. PW13- Dr.Sivakumar, who conducted autopsy deposed that he received a requisition letter under Ex.P10 for conducting postmortem and he conducted postmortem on the dead body and noticed the following features :

On dissection: Skull – Intact, Hyoid-Intact, Brain, Ribs – Normal, Heart, Lungs present, Stomach – empty, Intestine. No other obvious findings seen. Stomach, small intestine, liver, kidney with preservative sent for chemical analysis. Hyoid sent for forensic opinion. The deceased died 2 to 2 ½ months prior to autopsy and the cause of death was pending chemical analysis.

Ex.P11 is the postmortem certificate.

2.14. PW14- Tr.James Anthonyraj, who is the Scientific Officer, deposed that he has received case properties numbering five. After examination, he has issued Ex.P14- Toxicological Report stating that he has detected Monochrotophous item. PW15 – Tr.Devaraj is the Shop Owner of the fertilizer shop and he deposed that in the year 2016, in the month of March, one day A2 came to his shop and purchased poison/ insecticide – M.O.1.



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2.15. PW16- Tmt.Tamilvani, Constable deposed that she typed the statement of the witnesses in the computer. PW17- Tr.Sabaraikumar, Head Constable deposed that on 07.06.2016, as per the instructions from the Inspector of Police, he was summoned for conducting postmortem and after conducting postmortem, he has handed over the body for forensic analysis.

2.16. PW18-Tr.Narasimhan deposed that at the request of the Inspector of Police on 07.06.2016 at 12.00 hours, the body was taken from the burial ground and he conducted postmortem and thereafter, the body was buried in the same place. Ex.P15 is the report. PW19- Dr.Nagendrakumar deposed that he received a requisition letter for examination of Hyoid Bone and after examination, he gave Ex.P16 – report stating that the Hyoid Bone was intact.

2.17. PW20- Tr.S.Rathina Sabapathy, Inspector of Police deposed that he received Ex.P17- F.I.R. along with the complaint- Ex.P1 and took up the case for investigation, examined the witnesses and handed over the case details to the Inspector of Police for further investigation.



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2.18. PW21-Rani, Sub Inspector of Police had received the written complaint from PW1 in Ex.P1 and registered a case in Crime No.275/2016 under Section 174 CrPC. PW22 – Tr.Rajasekar, learned Judicial Magistrate I, Thirupathur deposed about recording statement of the witnesses under Section 164 CrPC statement. PW23 – Tr.Duraipandian, Inspector of Police deposed that he took up the case for further investigation and altered the Sections and issued Ex.P18- Alteration Report. He went to the Scene of Occurrence on 07.06.2013 and prepared Observation Mahazar and Rough Sketch – Ex.P19 in the presence of PW11 and one Adhimoolam.

2.19. A1 and A2 surrendered before PW11 and he produced A1 and A2 before PW23, who arrested A1 and A2. On enquiry, A1 voluntarily gave confessional statement and the same has been recorded. In pursuance to the admissible portion of the confessional statement under Ex.P20, A1 took them to his house and identified the place where she kept M.O.1 – Insecticide Poison box and the same has been seized under Ex.P- Mahazar. A2 took to VRS shop where he purchased the insecticide in pursuance to the admissible portion of the confession statement of A2 under Ex.P21. PW23 sent the material objects under Form-95- Ex.P22,



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recorded the statement of witnesses and upon completion of investigation, he has laid the final report under Sections 120(B), 302, 201 r/w. 302, 109/34 rw. 302 IPC.

3. The prosecution, in order to prove the guilt of the accused, examined 23 witnesses, marked 22 exhibits and also one material object. Upon completion of prosecution side evidence, the accused was questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances culled out from the evidence of the prosecution witnesses and they denied the same and stated that a false case has been foisted against them. Neither any witness was examined on the side of the defence nor any document was marked. The Trial Court, after appreciating the oral and documentary evidence, found that the prosecution has miserably failed to prove the charges levelled against the accused and acquitted them. Being aggrieved over the same, PW1/defacto complainant has preferred this criminal appeal.

4. The learned counsel appearing for the appellant / defacto complainant would submit that the Trial Court erred in saying that there is a contradictory evidence of PW1 and PW4 compared with the evidence of



PW21 and Ex.P17. There is a contradictory evidence of PWs.8 to 10 in respect of surrender of the accused before the VAO/PW12. The Trial Court failed to consider the material fact that PW15, owner of the fertilizer shop has deposed that the insecticide was purchased by A2 and the evidence of the doctor and medical evidence has also showed that the deceased died due to consumption of poison. The Trial Court erred in saying that A2 was caught on 05.06.2016 in the bedroom of A1 by the witnesses, which is not sufficient to prove that they were having illegal intimacy even prior to the death of the deceased. The findings of the Trial Court is not proper in saying that A1 has no capacity to give Rs.15,000/- to A2 and asked him to purchase insecticide to commit murder of her husband.

5. The learned Additional Public Prosecutor appearing for the first respondent / State would submit that the prosecution has proved the motive of the occurrence that A1 had illicit intimacy with A2 and thereby A1 has given poison to her husband by mixing insecticide in 7up bottle and the same has been corroborated through the evidence of PWs.2 and 3. The prosecution has able to prove the case through the evidence of PW15, owner of the fertilizer shop, who clearly deposed that A2 had purchased



insecticide from his shop. The medical evidence also corroborates with the evidence of PW15 with regard to the cause of death that occurred due to consumption of poison. The prosecution has clearly proved the circumstances of motive, eye witness and medical evidence. Further A1 and A2 themselves voluntarily surrendered before the PW12-Village Administrative Officer and gave their confessional statements and in pursuance of the confession statements, M.O.1 – Insecticide Bottle has been recovered in the presence of PW12 and the same has been corroborated by the evidence of PW20/Investigating Officer. The Trial Court failed to appreciate the oral and documentary evidence in proper perspective and the judgment of the Trial Court is liable to be set aside and prayed for conviction of the respondent / accused.

6. *Per contra*, learned counsel appearing for the respondents 2 and 3 / Accused 1 and 2 would submit that the prosecution has failed to prove its case beyond reasonable doubt and the learned Trial Judge has rightly found that there are contradictions in the evidence of PW1 and PW4 compared with the evidence of PW21 with regard to registration of FIR under Ex.P17 and also found that there are contradictions in the evidence of PWs.8 and 10 with regard to surrender of A1 and A2 before PW12,



since PW1 categorically deposed that A1 and A2 were caught hold from the house of A1 and PW1 and others have taken them to the police station.

Therefore, the case of the prosecution that A1 and A2 voluntarily surrendered before PW12 is unsustainable in law. Further, when the arrest itself is falsified by the defence, then recovery of M.O.1 in pursuance to the confessional statement of A1 would not have any evidentiary value and hence, there is no reason to warrant interference with the findings recorded by the Trial Court and prays for dismissal of this appeal.

7. We have considered the submissions made and also perused the entire materials available on record.

8. The prosecution, in order to prove the guilt of the accused, relied on the following circumstances:

(i) Motive and Eye Witness

(ii) Arrest and Recovery of material objects

(iii) Medical Evidence

MOTIVE AND EYE WITNESS

9. The prosecution has relied upon the evidence of Pws.1 to 3 to prove the motive to the occurrence. PW1 deposed that on 30.03.2016,



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the deceased returned to home after completing his work, had his dinner at 9.00 p.m. and he had gone to his bed. After some time, the deceased was vomiting and calling PW1, his sister. She came out from her room and reached the room where A1 is residing. When PW1 asked A1 why his brother was shouting, for which A1 replied that he was in drunken mood and shouting and told that if he sleeps well, he would be alright and also told PW1 to go to bed. On the next day on 31.03.2016, when PW1 woke up from the bed and came out, she saw that the deceased was lying on a matt, suffering from fits. Hence PW1 called others for help and brought the deceased to the Government Hospital, Tirupattur. Doctors informed that her brother was already died. They brought the body of the deceased to home and then, as per their customs, they buried the body of the deceased. PW1 further deposed that after completion of 40 days ceremony, A1 had gone to her parents' home. On 05.06.2016 at 4.00 p.m., A1 returned with his children to her matrimonial home. At about 9.00 p.m. on the same day, PW2 who is the son of the deceased had come to PW1 and told that some male person was talking with his mother / A1. PW1 went to her brother's / deceased room wherein she saw A2 was talking with A1, but A1 asked PW1 why she had come there and told her to go out. PW1 came out from that place / room, locked the doors, came to the



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first floor and brought Tvl.Egaraj, Murugan, Praveen, Prem, Divyanathan and Sagayamary to the third floor, opened the doors and had shown A2 to all. When they enquired, A2 told that he was called by A1 and hence he came. A2 informed that they murdered the deceased, for that A1 gave him Rs.15,000/- to purchase poison. They caught hold A1 and A2, brought them to the police station and PW1 lodged a complaint under Ex.P1.

10. PW2, who is the son of the deceased and A1, deposed that a day before his death, his father came home after completing his work at night and after changing dress, he had dinner. At that time, A1 took a bottle from the slab, poured something in a 7up Bottle and gave to the deceased. When PW2 and his sister / PW3 asked A1 what did she mix, A1 told them that their father was suffering from stomach pain and hence, she gave medicine. After drinking the same, his father was suffering from loose motion and he had thrown the things which are all near to him on A1 and asked “what did she give”, “what did she give”. But A1 did not say anything and she started to wash the clothes of his father. Then A1 sent PW2 and his sister to bed to sleep. On the next day morning, when he woke up, he saw his father was suffering from fits and his uncle Murugan, Yogaraj and his brother and others, brought his father / deceased to



hospital, but they returned only with the dead body of his father. Three months later, A2 started to come to his house and when he came, A1 made the kids to sleep at upstairs and told that they should not come out and also threatened them that some ghost was there. Often A2 would come to A1's house at night hours. One day, PW2 told about the visit of A2 to A1's house to their aunt / PW1-Mariamammal and she caught hold of him and gave complaint to police.

11. PW3- Jenseipriya is the sister of PW2 and she deposed in similar version of PW2. The evidence of PWs.1 and 2 are very categorical that the deceased died due to administering of poison in the liquor consumed by the deceased by A1. When A2 was questioned while caught hold by PW1 and others, A2 himself told that he had been in connection with A1 for the past 3 or 4 months and he only purchased insecticide from PW15's shop, as corroborated by the evidence of PW15 and gave to A1, for which A1 gave Rs.15,000/-.

12. All the witnesses such as PW2 to PW7 have deposed in their evidence that on 30.03.2016 at 9.30 p.m., or 10.00 p.m., the deceased was suffering from ill health and all the inmates PW1, PW5 to PW7 did not



bring him to the hospital, since he had consumed liquor. None of the witnesses has deposed about the alleged occurrence taken place on 30.03.2016 to the police.

13. According to the prosecution, the deceased died on 31.03.2016, whereas Ex.P1 complaint was lodged on 06.06.2016 before PW20 and the same has been registered at 10.30 p.m. in Cr.No.275/2016 initially under Section 174 CrPC. PW1 and PW4 stated that they did not go to the police station, whereas Ex.P1 -complaint was given to the police in person. PW1 stated that she has given Ex.P1 with Egaraj, Murugan, Praveen, Prem, Divyabalan, Sagayamari along with A1 and A2. PW21-Sub Inspector of Police deposed that PW1 came to the police station and gave Ex.P1-complaint and thereafter, he has registered Ex.P17-F.I.R. In this regard, there is a contradiction between the evidence of PW1 and PW4 with regard to lodging of complaint before PW21. In the complaint – Ex.P1, it has been stated that on 31.03.2016, her brother suddenly fell ill and was brought to the hospital and died in the hospital, but his body was buried as per the customs of the Christianity.

14. As per the prosecution case, on 30.03.2016, A1 mixed poison in the liquor bottle and gave to the deceased and the same was seen by



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PWs.2 and 3. PW1 was residing in upstairs in the 3rd floor. In the 164

CrPC statement under Ex.P2 recorded from PW1, she has stated that at 9.30 p.m. on 30.03.2016, deceased brother was not able to talk, but in her evidence, she categorically deposed that her brother was continuously vomiting and called PW1. Whereas PWs.5, 6 and 7 deposed that on 30.03.2016 at 9.15 p.m., the deceased himself was not able to speak.

15. PW2, in his evidence deposed that her mother had taken bottle from the slab and mixed in a 7up bottle and gave to the deceased and thereafter the deceased was suffering from loose motion and the same was questioned by the deceased. Whereas in his statement recorded under Section 164 CrPC under Ex.P3 he had stated that A1/mother had given some tonic since the deceased was having trouble in his throat and the contradiction found in the evidence of PW2 and the statement recorded in Ex.P3, creates doubt whether A1 mixed poison in the 7up bottle as per the evidence of PW2.

16. The evidence of PWs.5 to 7 revealed that on 30.03.2016 at 9.30 p.m. itself, the deceased was not in a position to talk and at this situation, the evidence of PW1 that the deceased called PW1 by name “Mari Akka”

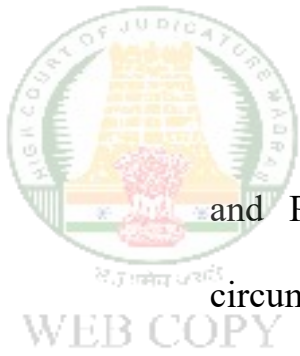


and the evidence of PWs.2 and 3 that the deceased asked A1 that “what did she mix” creates doubt and their evidence are not natural ones.

ARREST AND RECOVERY

17. PW1 has deposed that on the information of PW1 and PW3, she gone to downstairs to the room of A1 and she locked the entry doors and came to downstairs and called other witnesses. But PW4 deposed that as if she had gone upstairs and caught hold them and made enquiry. PWs.1, 4 to 10 have stated that for the first time, they have seen A2 on 05.06.2016. He was wearing Black Shirt and Black Pant, but PW9 deposed that he was not wearing any shirt. The contradictions between the evidence of PW.1, 4 and 9 creates doubt about the presence of A2 in the house of A1.

18. PW1 categorically admitted in her evidence that he had seen A2 for the first time on 05.06.2016. PWs.2 and 3 deposed that often A2 come to their house and he was caught hold by her aunt and as per the Rough Sketch – Ex.P19, there are two rooms, one Kitchen and one Hall in the 2nd floor. PW5 deposed that PW4 and PW1 and family of the deceased were residing in two floors and in one room A1, PW2 and PW3 were residing



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and PWs.1 and 4 were residing in another room. In the above circumstances, it is highly unacceptable that without the knowledge of PWs.1 to 4, A2 would not have come to the room of A1. Except the evidence of PWs.2 and 3, no one has seen A2 prior to 05.06.2016.

19. PWs.1, 4 to 9 has deposed that on 05.06.2016, when they caught both the accused, A2 told that he is having connection with A1 for the past 4 months. Except this evidence there is no other reliable evidence to show that prior to the death of the deceased, A1 was having illicit intimacy with A2. Even at the time of their father, A2 would come to their home as per the evidence of PWs.2 and 3.

20. In respect of recovery of M.O.1 – Insecticide Poison Box, PW12-VAO deposed that M.O.1 was taken from Almirah, situated in the room of A1 and whereas PW20/I.O., M.O.1 was recovered from the slab. Further PW12 could not describe the contents of M.O.1 and deposed that he signed the Mahazar in the police station. PW15-owner of the fertilizer shop categorically deposed that in respect of insecticide purchased by A2, the counter foil of the bill was seized by the Investigating Officer and the same was not brought on record by the prosecution. It was also not stated



what was the price of fertilizer purchased by A2 which is highly unbelievable.

21. The accused 1 and 2 have been caught hold from the house of A1 and they brought them to the police station as per the evidence of PW4 and PW5. Whereas, PW12 stated that A1 and A2 had voluntarily surrendered before them, which falsifies the prosecution theory of recovery.

22. Though the evidence of the doctor and the medical evidence shows that the deceased died due to consumption of poison, there is no reliable evidence that the poison was procured by A2 and given to A1, who in-turn had given to the deceased.

23. The prosecution has miserably failed to prove the circumstances to sustain the guilt of the accused and the Trial Court, on a proper consideration of oral and documentary evidence, has rightly acquitted them from the charges. This Court finds no perversity in the judgment and no reason to interfere with the judgment of acquittal passed by the Trial Court and finds no merit in this appeal.



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24. Accordingly, this Criminal Appeal stands dismissed, confirming the judgment dated 10.10.2018 made in S.C.No.201 of 2017 passed by the III Additional District and Sessions Judge, Tirupattur, Vellore District.

(P.V.,J.) (M.J.R.,J.)
28.01.2026

Jvm
Index : Yes / No
Internet : Yes / No
Speaking /Non speaking Order

To

1. Inspector of Police,
Tirupattur Town East Police Station,
Tirupattur, Vellore District.
2. The III Additional District and Sessions Judge,
Tirupattur, Vellore District
3. The Public Prosecutor,
High Court, Madras.



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