



Crl.A(MD)No.1339 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**Crl.A(MD)No.1339 of 2025
and Crl.M.P(MD)No.19657 of 2025**

Sakthivel

... Appellant/Sole Accused

Vs.

State of Tamil Nadu,
Represented by,
The Inspector of Police,
Edaiyakottai Police Station,
Dindigul District.
(Crime No.99 of 2022).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 415 of BNSS, 2023 and 374(2) of Cr.P.C to call for the records from the lower Court in S.C.No.114 of 2023 on the file of the learned Additional District Judge, Fast Track Court, Palani and set aside the Judgment dated 18.08.2025 by acquitting the accused and by allowing the appeal.

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For Appellant : Mr.K.Prabhu
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.114 of 2023, dated 18.08.2025, on the file of the learned Additional District Judge, Fast Track Court, Palani, thereby convicting the appellant for the offence punishable under Section 302 of I.P.C.

2.The case of the prosecution is that the accused and P.W.2 are relatives. P.W.2 owned agricultural land, which was managed by the deceased. When the accused offered to maintain the land owned by P.W.2, the offer was refused by P.W.2. Therefore, the accused had a motive to do away with the life of the deceased in order to maintain the agricultural land owned by P.W.2. While being so, on

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23.12.2022, at about 04:45 p.m., the accused assaulted the deceased on the head with a hammer. As a result, the deceased sustained grievous injuries and subsequently died.

3.On the complaint, the respondent registered an F.I.R in Crime No.99 of 2022 for the offence punishable under Section 302 of I.P.C. After completion of the investigation, a final report was filed and the same was taken cognizance by the Trial Court.

4.In order to bring the charges to home, the prosecution examined P.W.1 to P.W.13 and marked Exs.P1 to P28. The prosecution also produced Material Objects M.O.1 to M.O.17. On the side of the accused, no witnesses were examined and no documents were produced before the Trial Court.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under



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Section 302 of I.P.C and sentenced him to undergo life imprisonment and imposed a fine of Rs.10,000/- in default, to undergo six year Rigorous Imprisonment. Aggrieved by the same, the appellant has filed the present Criminal Appeal.

6.The learned counsel appearing for the appellant submitted that the alleged occurrence took place on 23.12.2022 at about 04.45 p.m. However, it was reported to the police only at about 21.30 hours, and the F.I.R. also reached the Court belatedly. There is absolutely no explanation offered by the prosecution for the delay in registering the F.I.R. and forwarding the same to the Court.

7.It is a case based on circumstantial evidence; however, the prosecution failed to prove a complete chain of circumstances to connect the accused with the alleged offence. Nevertheless, the Trial Court convicted the accused based on the statement recorded under Section 164 of the Cr.P.C. A statement recorded under Section 164 of

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the Cr.P.C. is not a substantive piece of evidence and can be used only for the purpose of contradiction. Except the statement recorded under Section 164 of the Cr.P.C., there is no evidence available to support the case of the prosecution. Even then, the Trial Court mechanically convicted the appellant for the offence punishable under Section 302 of I.P.C.

8.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that, although the eyewitnesses turned hostile, the statement recorded under Section 164 of the Cr.P.C. is very clear and can be used for both corroboration and contradiction. The object of recording a statement under Section 164 of the Cr.P.C. is to deter a witness from changing their version by denying the contents of the earlier recorded statement and to prevent the witness from claiming immunity from prosecution. Therefore, a statement recorded under Section 164 of the Cr.P.C. cannot be simply brushed aside.



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9. Although a statement recorded under Section 164 of the Cr.P.C. is not a substantive piece of evidence, it not only meets the test of relevancy but can also be used for the purposes of contradiction and corroboration. It serves a special purpose in criminal investigation, as greater credibility is attached to it since it is recorded by a Judicial Magistrate and not by the Investigating Officer. Therefore, the weight to be attached to such a statement has to be determined by the Court on a case-to-case basis. Hence, the Trial Court rightly convicted the appellant and the same does not warrant interference of this Court.

10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

11. On perusal of the records, it is unfortunate to note that all the witnesses, who were eyewitnesses to the occurrence, turned



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hostile, including the witnesses to the arrest, recovery and observation mahazar. Therefore, the Trial Court convicted the appellant on the strength of the statements recorded under Section 164 of Cr.P.C of P.W.2 and P.W.5.

12.The only issue arising in this appeal is whether the Trial Court was right in convicting the accused solely on the basis of the statements recorded under Section 164 of Cr.P.C of P.W.2 and P.W.5. The statement of P.W.2 was marked as Ex.P.13 and the statement of P.W.5 was marked as Ex.P.14. However, no other evidence is available to corroborate these statements recorded under Section 164 of Cr.P.C.

13.It is a settled principle of law that the statements recorded under Section 164 of Cr.P.C, can never be used as substantive evidence of the truth of the facts, they may be used only for the purposes of contradiction and corroboration, wherever



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applicable and further, a statement recorded under Section 164 of Cr.P.C alone cannot form the sole basis for conviction.

14. In this regard, it is relevant to rely upon the Judgment of the Hon'ble Supreme Court in the case of ***R.Shaji Vs. State of Kerala [2013(14) SCC 266]***, wherein it was stated as follows:

“14. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must



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disclose in his statements under Section 164 Cr.P.C. Hence, the magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted. (Vide: Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565; and Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. & Ors., AIR 2000 SC 2901).

16. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the



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Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.”

15.The above Judgment is squarely applicable to the case on hand. However, the Trial Court convicted the appellant on the basis of the statements recorded under Section 164 of Cr.P.C.

16.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.114 of 2023, dated 18.08.2025, on the file of the learned Additional District Judge, Fast Track Court, Palani, cannot be sustained and are liable to be set aside.

17.In the result, this Criminal Appeal is allowed and the Judgment made in S.C.No.114 of 2023, dated 18.08.2025, on the file of the learned Additional District Judge, Fast Track Court, Palani, is



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hereby set aside and 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 they are no longer required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

[G.K.I.J.] & [R.V.J.]
09.02.2026

NCC :Yes/No
Index :Yes/No
ps

To

1.The Additional District Judge,
Fast Track Court, Palani.

2.The Inspector of Police,
Edaiyakottai Police Station,
Dindigul District.

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

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