



Crl.A.No.217 of 2017

In the High Court of Judicature at Madras

Dated : 05.4.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Appeal No.217 of 2017

Hari (a) Hariraj

Vs

...Appellant

The State rep.by the Inspector of
Police, Anaimalai Police Station,
Pollachi.

...Respondent

APPEAL under Section 374 of the Criminal Procedure Code
against the judgment and order dated 23.3.2017 rendered in Special
C.C.No.1 of 2013 on the file of the Principal District and Sessions
Court, Coimbatore.

For Appellant :

Mr.V.Karthik, SC for
Mr.R.Krishna Prasad

For Respondent :

Mr.L.Baskaran,
Government Advocate (Crl.Side)

JUDGMENT

This appeal has been filed by the appellant/A1 against the



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judgment and order passed by the Principal District and Sessions Court, Coimbatore in Special C.C.No.1 of 2013, dated 23.3.2017, convicting and sentencing the appellant in the following manner :

S. No	Offence for which convicted	Sentence imposed
1	Section 135(1)(e) of the Electricity Act, 2003	Six months simple imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo two months simple imprisonment
2	Section 304-A of the IPC	-do-
The above sentences were directed to run concurrently and the period already undergone by the appellant was directed to be set off under Section 428 of the Cr.P.C.		

2. The case of the prosecution is as follows :

(i) The appellant/A1, who was the owner of 45 acres of coconut grove, had put up a barbed wire fencing around his lands. A2 made use of the electricity connection given to the appellant/A1 in connection No.642 from October 2010 to 03.11.2010 unauthorizedly. In continuation of the same, A2 and A3 managed to draw electricity to the barbed wire fencing that was put up around the lands of the appellant.

(ii) On 03.11.2010 at about 8.45 AM, when one Tharani (a) Thavamani, who was studying in the adjacent school, went near the



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barbed wire fencing for dumping wastages, she was electrocuted and as a result, she died on the same day.

(iii) P.W.1, who is the father of the deceased, came to know about the incident and he rushed to the school. From there, the victim was sent in a van to the Government Hospital, Kottur and at about 9.15 AM, the doctor, who examined the victim, declared her as 'brought dead'. P.W.1 gave a complaint - Ex.P.1 to the Sub-Inspector of Police, Kottur Police Station on 03.11.2010 at about 10.30 AM.

(iv) P.W.13 - the Inspector of Police, Anaimalai Taluk acted upon the complaint and registered the first information report - Ex.P.7 in Cr.No.409 of 2010 on the file of the respondent Police for an offence under Section 304 of the Indian Penal Code (for brevity, the Code). He went to the scene of occurrence at about 11.30 AM and in the presence of P.W.4 and P.W.5, prepared the observation mahazar - Ex.P.2 and two rough sketches marked as Ex.P.8 and Ex.P.9. He also recovered M.O.1 to M.O.3 from the scene of occurrence under seizure mahazar marked as Ex.P.10. Thereafter, he went to the Government Hospital, Kottur and conducted inquest over the dead body of Tharani (a) Thavamani in the presence of panchayatdhars and prepared the inquest report marked as Ex.P.11.



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(v) The dead body was sent for post mortem and it was conducted by P.W.11 - the doctor, who was working in the Government Hospital, Kottur at the relevant point of time. The post mortem certificate was marked as Ex.P.6, in which, the following appearances were noted :

"Moderately built body of a female child; symmetrical; eyes closed; hair black, 3/4 inch frothy discharge seen both nostrils and mouth; no discharge seen ears.

External injury : (1) 4 X 1 cm X 0.5 lacerated drag injury; right little finger anteriorly.

(2) 2 X 1 cm dried abrasion; right thumb tip.

Both injuries seem to be point of electrical entry.

(3) 5 X 1 cm split abrasion. Left chest lower aspect seem to be exit point.

(4) small abrasions in left forearm.

Abdomen genitalia normal. Internal hyoid ribs intact. Lungs congested. C/S blood stained frothy discharge seen. Heart contracted. Chambers empty. Stomach contains partly digested food. Liver, spleen, both kidneys congested. Bladder empty.



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Uterus normal. Scull intact. Membranes congested. Brain congested."

(vi) P.W.11 gave the final opinion to the effect that the deceased would appear to have died of electric shock, which had paralysed heart and respiratory organ.

(vii) P.W.13 thereafter recorded the statements of witnesses under Section 161(3) of the Criminal Procedure Code (for short, the Cr.P.C.). He arrested A2 at about 12 Noon on 13.11.2010 and based on his confession made in the presence of witnesses including P.W.12, M.O.4 was seized under seizure mahazar marked as Ex.P.13. On the same day at about 2 PM, A3 was arrested and based on his confession, M.O.5 was recovered in the presence of the same witnesses under seizure mahazar marked as Ex.P.15.

(viii) A2 and A3 were produced before the concerned Court and remanded to judicial custody. P.W.13 also recorded the statements of P.W.8 to P.W.10 and collected their reports. He also collected the post mortem report and recorded the statement of the doctor, who conducted the post mortem. Ultimately, the investigation was completed and the final report was filed before the Trial Court.

(ix) The accused persons were served with copies under Section



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207 of the Cr.P.C. The Trial Court found prima facie materials against the accused persons and hence, framed charges against them under Section 135(1)(e) of the Electricity Act, 2003 and Section 304-A of the Code. When these charges were put to the accused persons, they denied the same and pleaded 'not guilty'.

(x) The prosecution examined P.W.1 to P.W.13 and marked Ex.P.1 to Ex.P.15 and identified and marked M.O.1 to M.O.5. When the incriminating evidence that was gathered during the course of trial was put to the accused persons, while questioning under Section 313(1)(b) of the Cr.P.C., they denied the same as false.

(xi) The Trial Court, on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, acquitted A2 and A3 from all charges. However, the Trial Court found that the prosecution had proved the case against the appellant/A1 beyond reasonable doubts and accordingly convicted and sentenced him in the manner stated supra. Aggrieved by that, the appellant has filed this appeal.

3. I have heard the learned Senior Counsel appearing on behalf of the appellant and the learned Government Advocate (Criminal Side)



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appearing for the State.

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4. The learned Senior Counsel appearing on behalf of the appellant would submit that the evidence of P.W.3, P.W.4 and P.W.7 clearly proved that the barbed wire fencing was not connected from the switch board of the appellant and that the victim died only due to the short circuit from the nearby transformer. According to him, P.W.8 had clearly deposed that the distance between the main switch and the barbed wire fencing was 25 feet whereas in Ex.P.10, it had been mentioned only as 12 feet. He would further submit that if that is taken into consideration, there is no possibility of connection between main switch and the barbed wire fencing.

5. It was further contended that the electricity was flowing into the barbed wire fencing only due to short circuit from the transformer and that there was a power shut down in the village on that day, which improbabilises the case of the prosecution that electricity that was flowing into the barbed wire fence was from the switch board of the appellant.



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6. To substantiate the said submission, the learned Senior Counsel appearing on behalf of the appellant brought to the notice of this Court the rough sketches marked as Ex.P.8 and Ex.P.9. He concluded his arguments by submitting that there was absolutely no proof to show that the barbed wire fence was connected with the switch board through the yellow wire marked as M.O.3 and the iron rod marked as M.O.1 and that the judgment of the Trial Court in convicting and sentencing the appellant requires interference of this Court.

7. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the State submitted that the evidence of P.W.2 made it very clear that Tharani (a) Thavamani was electrocuted when she went near the barbed wire fence around the lands of the appellant and that there was absolutely no material to prove that there was any short circuit from the transformer, which resulted in the electricity flowing into the barbed wire fence.

8. To substantiate this submission, the learned Government Advocate (Criminal Side) also relied upon the evidence of P.W.8,



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through whom, Ex.P.5 report was marked. He brought to the notice of this Court the relevant portion in the report marked as Ex.P.5, which is extracted as hereunder :

"ehd; rk;gt ,lk; te;J> jpU.Rg;ukzpad;>
fk;gpahsUld; ghh;itapl;L> mtiu tprhhpj;jjpYk;> Ma;T
nra;jjpYk;> Nkw;fz;l Ma;tpy; jpU.rp.vk;. `hpuh[;
mth;fspd; Njhl;l;Jr;rhis kpd; ,izg;G vz;.642-y; ,Ue;J
,uz;L kQ;rs; epw xah;fs; switch control cld; ntspNa
vLf;fg;gl;L> me;j xah;fs;py; xd;W Rkhh; 5 mb ePsKs;s
,Uk;Gf; fk;gpapy; ,izf;fg;gl;Lk;> ,Uk;Gf;fk;gpapd;
kWKid Ks; fk;gpNtypAld; ,izf;fg;gl;Lk; ,Ue;jJ. kQ;rs;
xah;fs;py; kw;nwhd;W mUNf njhq;fpf; nfhz;bUe;jJ.
kpd;D};l switch tPl;bDs; off nra;ag;gl;L ,Ue;jJ. Nkw;gb
switch-l 'on' gz;zpdhy; jhuzp (v) jtkzp vd;gth;
kpd;rhuj;jhy; jhf;fg;gl;l ,lj;jpy; cs;s Ks;fk;gpNtypapy;
kpd;D};lk; Vw;gl;L> Nkw;gb kpd;D};lj;jhy; kdpj
capUf;F CW Vw;gLk; vd rhd;wsp;fpNwd;."

9. The learned Government Advocate (Criminal Side) appearing for the State further submitted that the Trial Court, after properly appreciating the evidence, came to the conclusion that the appellant, due his gross negligence in passing on electricity to the barbed wire



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fence, caused the death of Tharani (a) Thavamani. In other words, he submitted that the appellant is the *causa causans* for the death of Tharani (a) Thavamani. Accordingly, he sought for dismissal of the appeal.

10. This Court has carefully considered the submissions of the learned counsel on either side and the materials available on record.

11. There is no dispute with regard to the fact that the death of Tharani (a) Thavamani was caused only due to the electric shock and the same is evident from the deposition of P.W.11 and the post mortem certificate marked as Ex.P.6. It is also clear from the evidence of P.W.2 that the deceased had come out of the school, that while going near the barbed wire fence, she was electrocuted and that she was rescued from that place by P.W.2 and sent to the hospital in a van by one Marudhachalam.

12. The short issue that requires the consideration of this Court is as to whether the electrocution took place because of the electricity flowing into the barbed wire fence due to short circuit from the



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transformer or the electricity was taken from the electricity connection given to the appellant and was illegally connected with the barbed wire fence.

13. P.W.3, who was examined on the side of the prosecution, was treated as a hostile witness and during cross examination, she stated as follows :

"fk;gp Ntypf;Fk; Njhl;lj;Jr;rhisf;Fk; ,ilNa cs;s
J}uk; Rkhh; 6 mb ,Uf;Fk;. fk;gpahsh; te;jTld; rhisapy;
,Ue;j kpd;rhuj;ij Jz;bj;jhh;. gpd;dpl;Lk; Nrhhjd nra;jNghJ
Ntypapy; kpd;rhuk; ,Ue;jjhfr; nrhd;dhh;fs;. gpd;dpl;L
nkapd; Rtpl;ir Mg; nra;j gpwFk; kpd;rhuk; Ntypapy;
,Ue;jJ. gpd;dpl;L buhd;];ghh;khpypUe;J fk;gp mWe;J
tpOe;J kpd;rhuk; te;jjhfr;vy;NyhUk; Ngrpf; nfhz;lhh;fs;."

14. It is clear from the evidence of P.W.3 that the distance between the barbed wire fence and the switch board in the coconut grove was only six feet. The place was inspected by P.W.8 and he submitted a report, which was marked as Ex.P.5. The relevant portion in the said report has already been extracted supra. It is also clear from the said report that the electricity was flowing into the barbed



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wire fence only from the electricity connection that was given to the appellant. This was further confirmed by the evidence of P.W.9, who was treated as a hostile witness and who stated that he found M.O.3 near the barbed wire fence. The statement made by P.W.9 only confirms the evidence and the report of P.W.8. Even as per the seizure mahazar, M.O.3 was recovered from the scene of occurrence and it only strengthens the evidence of P.W.8.

15. The Trial Court, on appreciation of the oral and documentary evidence, came to the conclusion that the electricity connection that was given to the appellant was illegally used and it was connected through a wire to the barbed wire fence and as a result, the innocent girl was electrocuted, due to which, she died. This finding of the Trial Court does not suffer from any illegality.

16. The alternate hypothesis, which was projected by the defence, was that there was a short circuit in the transformer and that the electricity was flowing into the barbed wire fence from the transformer had not been established. When the defence comes up with such an alternate plea, the onus of proof is only on the accused



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and the same has not been discharged.

17. In the light of the above discussions, the conviction of the appellant/A1 by the Trial Court for the offence under Section 135(1)(e) of the Electricity Act, 2003 and Section 304-A of the Code deserves to be sustained and is sustained.

18. The next issue to be gone into is regarding the sentence to be imposed against the appellant.

19. In the facts and circumstances of the case and in order to ensure that the family of the deceased is sufficiently compensated for the rash and negligent act of the appellant, this Court is inclined to modify the sentence in the following manner :

<i>S. No</i>	<i>Offence for which convicted</i>	<i>Sentence imposed</i>
1	Section 135(1)(e) of the Electricity Act, 2003	to pay a fine of Rs.10,000/- and in default, to undergo six months simple imprisonment
2	Section 304-A of the IPC	to pay a fine amount of Rs.5,00,000/- as compensation to the family of the victim girl under Section 357(1) of the Cr.P.C. and in default, to undergo one year simple imprisonment



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20. The appellant has already deposited the fine amount of Rs.10,000/- before the Trial Court even on 23.3.2017. The appellant has also paid the fine amount of Rs.5,00,000/- as compensation to the parents of the deceased and the receipt that was produced before this Court signed by the parents of the deceased substantiates the same. This was further confirmed by the learned Government Advocate (Criminal Side) on instructions given by the respondent - Police. In view of the same, the sentence imposed against the appellant has been fulfilled.

21. In the result, the judgment and order dated 23.3.2017 rendered in Special C.C.No.1 of 2013 on the file of the Principal District and Sessions Court, Coimbatore is modified in so far as the sentence is concerned to the extent indicated herein above and this appeal is partly allowed. The appellant was enlarged on bail during the pendency of this appeal by order dated 13.4.2017 made in Crl.M.P.No.5274 of 2017. In the light of the sentence being modified in this judgment and complied with by the appellant, the bail bonds executed shall stand cancelled.



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N.ANAND VENKATESH,J

RS

To

- 1.The Principal District and Sessions Court, Coimbatore.
- 2.The Inspector of Police, Anaimalai Police Station, Pollachi.
- 3.The Public Prosecutor, High Court, Madras.

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