

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

CRL.A.No.429 of 2006

AGAINST THE JUDGMENT IN SC 337/2002 of PRINCIPAL ASSISTANT
SESSIONS COURT, NORTH PARAVUR DATED 17-02-2006

APPELLANT/ACCUSED:

KRISHNAVENI @ SHAJI,
S/O.RAMAKRISHNAN, THATTARUPARAMBIL VEEDU,
ALAMTHURUTH KARA, VADAKKEKKARA, NORTH PARAVUR.

BY ADVS.SRI.LIJU. M.P
SRI.G.PADMARAJ

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY CIRCLE INSPECTOR OF POLICE,
VADAKKEKKARA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. S. HYMA, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.429 OF 2006

Dated this the 8th day of September, 2015.

J U D G M E N T

The accused in this case was prosecuted for the offence punishable under Section 304 of Indian Penal Code. He was found guilty of the offence alleged against him. Therefore he was convicted and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1 lakh with default clause of simple imprisonment for one year. Set off as per law was allowed. It was directed that if the fine amount is realised, it shall be paid as compensation.

2. The prosecution case is that on 03.06.1999, at about 9.30 a.m, PW1 found his mother lying dead in the courtyard of the alleged house of the accused. He rushed to the spot and called her and when he touched her body, he suffered electric shock. He cried aloud which brought people to the place and at

the instance of somebody who informed the lineman, electric line was switched off. PW1 and others who gathered at the place found that the deceased had wire around her hand and rest of it ran along the fencing on the alleged compound of the house leading to a plug point inside the house. PW1 went to the Police Station and laid Ext.P1 First Information Statement. The same was recorded by PW9 who, on the bases of Ext.P1, registered Ext.P5 First Information Report. Investigation was taken over by PW10. He went to the place of occurrence and prepared inquest report which is marked as Ext.P6. He had the body sent for autopsy and obtained Ext.P7 report. He recorded the statement of witnesses, prepared site plan and filed Ext.P8 report before court showing the name of the accused. Further investigation was done by the Circle Inspector of Police. PW11, Circle Inspector of Police, arrested the accused on 14.07.1999 and since the accused had obtained anticipatory bail he had released him on bail. Final report was laid by his successor in office.

3. Cognizance of the offence was taken by Judicial First Class Magistrate, North Paravur. The learned Magistrate, finding

that the offence is exclusively triable by a Court of Sessions, after following necessary procedures, committed the case to Sessions Court, Ernakulam under Section 209 Cr.P.C. The Sessions Court made over the case to Principal Assistant Sessions Court, North Paravur for trial and disposal. On receipt of records and on appearance of the accused before the said court, charge was framed for the offence under Section 304 IPC. To the charge, accused pleaded not guilty and claimed to be tried.

4. The prosecution, therefore, had PWs 1 to 11 examined and Exts.P1 to P8 marked. Exts.D1 to D4, portions of First Information Statement and C.D Statement were got marked by the defence. M.O.1 series were also got identified and marked.

5. After the close of the prosecution evidence, accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Finding that the accused could not be acquitted under Section 232 Cr.P.C, he was asked to enter on his defence. He did not chose to adduce any evidence.

6. The trial court, greatly impressed by the evidence of

PWs 1, 2, 5 and 7 came to the conclusion that the accused was responsible for drawing electric line along the boundary of his property posing threat to the people of the locality and when the deceased entered the premises, she happened to come across the wire so laid and was electrocuted. Holding that the accused was responsible for the death of Thankamma, he was found guilty. The conviction and sentence as already mentioned followed. The said conviction and sentence are assailed in this appeal.

7. Learned counsel appearing for the appellant assailed the conviction and sentence on several grounds. According to the learned counsel, the decision is based on conjectures and surmises and not on legal evidence. There is absolute want of evidence to show that the premises in question where the incident is alleged to have taken place is in the exclusive possession of the accused. True, as per Ext.P2, a Will alleged to have been executed by the parents of the accused, they bequeathed that portion of property which contains the building wherein the incident occurred to the accused. But whether the

Will has come into effect or not has not been established. Drawing attention to the evidence of PW5, it was pointed out by the learned counsel that according to him, electric connection stood in the name of one N.Krishna Panicker. It is significant to notice, according to the learned counsel, that PW5 says that he came to the office in September 1998 and as per the records available then, the connection was in the name of Krishna Panicker. PW7 has another story to say. He, in his chief examination, though stated that connection was in the name of the accused, in cross examination he conceded that he was speaking on the basis of police records and not on the basis of records kept in his office. It is therefore contended that there is nothing to show as of now that electric connection from which electricity could have flown, causing death of Thankamma was in the name of the accused. The description of property as could be discerned from Ext.P6 inquest report would indicate that it was uninhabited even though PWs 1 and 2 would say that the accused very often comes there and he resides there. Learned counsel pointed out that the investigating officer, for reasons best known

to him, did not chose to seize the objectionable materials from the place of incident and there is want of evidence to show that the claim of the prosecution that there was wire fencing all around the compound is true. Even though in the inquest report, this fact is mentioned, this is not spoken to by PW10 in his evidence. A mere narration in Ext.P6 will not be sufficient to constitute evidence unless the person who had drawn up the same speaks about the same in his evidence. Learned counsel also pointed out that there is no document obtained from any authority which would conclusively show that the accused was in exclusive possession of the property. It was contended that the shabby investigation has caused considerable prejudice to the accused and all that is seized from the place of incident is a piece of wire that was found tied around the hand of the deceased.

8. Learned counsel for the appellant drew the attention of this Court to the fact that PW10 says that when he visited the place of incident, the so called unauthorised drawing up of line was still remaining there. Learned counsel then pointed out that even assuming that what the prosecution says is true, no offence

under Section 304 IPC can be made out. It could not be said that the accused had the intention to cause death of deceased or that he had such knowledge that by the act committed by him, he would cause death of a person concerned. Learned counsel also pointed out that in fact the deceased is a rank trespasser into the property and come to the worst, the accused could be said to have committed the offence under Section 304 IPC if other materials are established against him. At any rate, according to the learned counsel, offence under Section 304 IPC will not lie and the conviction and sentence are bad in law.

9. Learned Public Prosecutor, on the other hand, vehemently tried to support the finding of the court below that offence under Section 304 IPC is clearly made out. The rash and indifferent act committed by the accused resulted in the death of an innocent person. The evidence of PWs 1, 2, 5 and 7 are clear to the effect that there has been unauthorised drawing of electric line along the fencing and the evidence of PW4 is clear to the effect that the accused was in possession of the property. The postmortem report namely, Ext.P7 leaves one in no doubt that

the death was due to electrocution. The court below has analysed the evidence in considerable detail and has come to the right conclusion that offence under Section 304 IPC is made out. It is therefore contended that no grounds are made out interfere with the conviction and sentence.

10. That Thankamma, mother of PW1, died on 03.06.1999 due to electrocution is a matter which cannot be disputed. She was found lying dead in the compound of the accused. The evidence of PW1 is to the effect that he happened to see his mother lying in the compound of the accused at about 9.30 a.m on 03.06.1999. He did not then understand that his mother was no more. He tried to wake up his mother. Then he received a shock from the place. He ran away from the place and called people who were working in the nearby compound. They came to the spot and they too could not go to the place due to the electric shock that was felt when they entered the compound. The entire fencing was electrified. Later on electric line was switched off and when they entered the place, they found that the mother of PW1 is no more. Wire was seen around her palm.

He then speaks about he having given Ext.P1 First Information Statement.

11. PW2 is a casual labourer. He says that on the date of the incident he and CW4 were carrying on agricultural operations in the nearby compound. At about 9 a.m on the said day, PW1 came to them and told them that he found his mother lying dead. They followed him and when they tried to enter the compound, they could not do so due to the shock they received from the fencing on the property. PW2 says that he then went to the workshop nearby and requested that somebody may inform the Electricity Board and short while thereafter two persons came to the place and removed the fuse. He identified M.O.1 as the wire that was seen bound around the palm of deceased.

12. PW5, at the relevant time, was functioning as Assistant Engineer of KSEB. According to him, when the Board received information about the incident, he had gone to the spot. He would say that he found there a plug inside the house and from that plug insulated and non-insulated wires have been drawn and through that wires electricity passes to the fencing and also to

the trees nearby. He found the deceased holding wire in her hand. He too identified M.O.1 wire. What is significant in his evidence in chief examination is that connection to the house which is MKM 360 is in the name of one Krishna Panicker. He, in cross examination, admitted that he had filed a report before Board but, for reasons best known to the prosecution, the investigating officer did not feel it necessary to seize that document which would have gone a long way in establishing the case of prosecution. In cross examination, this witness also says that his report will not show that there are two electric posts in the property. But his evidence is to the effect that there was one electric post in the property.

13. PW4 is none other than the brother of the accused. He says that the property where the incident occurred is in the possession of the accused.

14. The next witness whose evidence is of some relevance is PW7. He claims to have prepared Ext.P3 report produced by the prosecution. He in his evidence says that he was the Electrical Inspector of the area attached to the Board. He in his

chief examination stated that connection to the building stands in the name of the accused. In cross examination, shockingly enough he says that he has got information only from police records. That is too much from an Electrical Inspector who should have gone through the records of his office to ascertain in whose name connection stood instead of relying on police records.

15. PW9 is the Assistant Sub Inspector of Police who had recorded First Information Statement namely, Ext.P1 furnished by PW1. He, on that basis, registered a crime as per Ext.P5 First Information Report.

16. PW10 is the investigating officer who says at better about the investigation. True, in the inquest report, he describes the scene of incident and speaks about the wire etc. But, surprisingly enough, he did not feel it necessary to seize those objectionable materials and he had no explanation for the same. He did not even feel to find out whether electricity would pass through those lines which he claimed to have seen at the place of incident. It is even more shocking that he does not speak about

wiring in his evidence in court.

17. This is the evidence in the case. The question is whether the above evidence is sufficient in law to arrive at a conclusion that the prosecution has established beyond reasonable doubt that the accused is responsible for causing death of Thankamma and if he is responsible, what is the offence made out.

18. It cannot be disputed that the burden is on the prosecution to prove the entire case. The mere fact that the accused says that some other person had occupied the property does not mean that the prosecution has to fail. The prosecution has to adduce evidence to show that the property was in the exclusive possession of the accused. The above fact is based on the evidence of PW4 who is none other than the brother of the accused. He simply says that the property is in possession of the accused. It is surprising to note that there was no attempt from the investigating officer to obtain any document from the local authority to show that the building was standing in the name of the accused or property was in his possession. There is nothing

to show that he has been paying building tax or property tax for the property, documents of which could have been easily procured by the investigating officer from the authorities concerned.

19. True, as per Ext.P2, it would appear that the property where the incident occurred is set apart to the share of the accused. But, description of the property as could be discerned from Ext.P6 is that it is an uninhabited property. This Court is not overlooking the evidence of PWs 1, 2 and 4 who say that the accused is residing there. However, when PW1 was confronted with the statement in Ext.P1 to the effect that the accused only occasionally used to come to the place, he denied of having made such a statement. PW4 does not actually say that on the date of death of his parents, the Will has come into operation which alone would have given exclusive possession of property to the accused.

20. Of course, there is uniform evidence to the effect that entire fencing of the boundary of the property was laid with live wire. But, one fails to understand as to why those wires were not

seized by the investigating officer and produced before court. It is alleged by the prosecution that one end of the wire was seen around the hand of Thankamma, the deceased and other inserted to a pin inside the house. Even though Ext.P2 Will would indicate that the property is to devolve on the accused, there is no evidence of Will having come into operation except for the statement made by PW4 that as per Will he is living somewhere else.

21. The absence of narration of the investigating officer in his evidence regarding the place of incident and the non seizure of the materials which are alleged to have been found at the place and also the fact that there is inherent contradiction regarding the consumer of the electricity with reference to the house make the prosecution case weak.

22. One cannot presume that the accused is in exclusive possession of the property. There is some amount of contradiction with regard to the wire that found at the place. One of the witnesses would say that it was insulated. PW5 would say that both insulated and non-insulated. It is in this context

that the non seizure and production of other materials assume importance.

23. It is indeed sad that a lady lost her life by electrocution. But that is not a ground to fasten liability on the accused unless it is shown by the prosecution that he and he alone was responsible for the same. The shabby investigation goes a long way in discarding the prosecution story so also inherent contradiction in the evidence of the witnesses which have already been referred to.

24. The evidence is to the effect that there is an entrance to the compound through the western side. Nobody has a case that none can enter the property through that entrance. There is little evidence as to how the deceased stray into the property allegedly belonging to the accused and the occasion for her to catch hold of the wire.

25. For academic sake, one may also notice that even assuming what the prosecution says is true, offence under Section 304 IPC cannot be attracted. If any authority is required for that purpose, it is furnished by the decisions in **Cherubin**

Gregory vs. State of Bihar (AIR 1964 Supreme Court 205) and in **Ratnappa Shivalingappa Jeevani & Anr. vs. State of Karnataka** (2006 Crl. L.J. 1579).

26. Since it has been found that the prosecution had not been able to prove that the property is in the exclusive possession of the accused and also that he has unauthorisedly drawn electric connection etc., it could not be said in law that the prosecution has proved its case beyond reasonable doubt. Therefore, the accused is entitled to the benefit of doubt.

This appeal is allowed. The conviction and sentence passed by the court below are set aside and the accused stands acquitted of the charge levelled against him. His bail bond shall stand cancelled and he is set at liberty.

Sd/-

P.BHAVADASAN
JUDGE

smp

// True Copy //

P.A. To Judge.