

Bail Slip

Shanmugam appellant herein (Accused in S.C.No.16/10 on the file of the District & Sessions Judge, No.2, Kancheepuram) was released on bail by the order of this Court dated 20.02.2012 and made in MP.1/12 in Crl.A.No.551 pending on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2015

CORAM :

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A.No.551 of 2011

Shanmugam .. Appellant / A1

vs.

State, Rep. by
its Inspector of Police,
B3, Kanchi Taluk Police Station,
Kancheepuram,
Kancheepuram District.
(Crime No.403 of 2007) .. Respondent

Criminal Appeal preferred under Section 374 (2) of the Code of Criminal Procedure, against the Judgment of Conviction, dated 08.08.2011 made in S.C.No.16 of 2010 on the file of the learned District & Sessions Judge, No.2, Kancheepuram.

For Appellant : Mr.V.Padmanaban for
Mr.R.Karthikeyan

For Respondent : Mr.V.M.R.Rajentren
Addl. Public Prosecutor

JUDGMENT

The Criminal Appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, by the appellant / A1 against the judgment of conviction, dated 08.08.2011 made in S.C.No.16 of 2011 on the file of the District and Sessions Judge II, Kancheepuram.

2.The appellant / A1 has been convicted and sentenced to undergo life imprisonment for the offence punishable u/s.302 IPC and to pay a fine of Rs.1000/-, in default, to undergo further 6 months Simple Imprisonment by the judgment made in S.C.No.16 of 2010 passed by the learned District and Sessions Judge II, Kancheepuram.

3.The case of the prosecution, in a nut shell, is as follows:-

[a] The deceased Ravi was cultivating the lands which are adjacent to the lands of the accused owned by one Sudarmani on "Varam" basis by raising sugarcane crops and accordingly maintaining the same. The accused took electric wires for the purpose of operating electric motor through the post planted on the lands cultivated by the deceased in Mulapattu Village. On 24.04.2007, at 7.30 a.m., the deceased was doing the work of removing the grass on the ridges of the land. At that time, the deceased told the appellant/A1 that since the electric wires were in a damaged condition, he should not pass on the supply in the said electric line. For which, the appellant/A1 replied that "if the deceased dies on account of it, he would pay the amount/compensation" and switched on the electric motor and hence the current supply passed on the deceased, on account of which, he sustained grievous injuries. Immediately, he was taken to Government Hospital, Kancheepuram and on the way to the hospital, he died.

[b] PW-1, wife of the deceased lodged a complaint Ex.P1 before the Kanchi Taluk Police Station and based on the same, a case was registered in Crime No.403 of 2007 by the Sub-Inspector of Police for the offence punishable u/s.302 IPC and the registered FIR marked is Ex.P21. The Sub Inspector of Police sent a copy of the FIR to the jurisdictional Magistrate. PW-14, the Inspector of Police on receipt of the FIR, rushed to the spot at 10.00 a.m and recorded the statement of witnesses Mohan and PW-9 Thanigachalam and also prepared Observation Mahazar-Ex.P3. He also prepared rough sketch Ex.P22 and seized 1200 metre Aluminum wire (M.O.2) and a spade (M.O.1) under the cover of seizure mahazar Ex.P4 in the presence of the witnesses. PW-14 conducted inquest on the body of the deceased at Kancheepuram Government Hospital between 12.30 and 14.30 hours on the said date in the presence of witnesses and panchayatdars and prepared Ex.P23-inquest report and sent the viscera through Head Constable for examination.

[c] On 24.04.2007 at 3.15 p.m., Dr.Tamilvanan, PW-11 attached to the Government Hospital, Kancheepuram, received the request-Ex.P11 in Crime No.403 of 2007 for the autopsy and accordingly, PW-11 conducted the autopsy and opined that death could have been caused due to electrocution, resulting cardio respiratory arrest and for which issued Ex.P10-post mortem certificate.

[d] On 25.04.2007 at 6.00 p.m., PW-14 arrested the appellant/A1 Shanmugam near Kottavakkam Perumal Koil in the presence of witnesses Dhanapal and PW-10 Arumugam and recorded his confessional statement. Based on the said confession statement, PW-14 seized Ex.P2-sandha receipt and Ex.P9-mortgage receipt under Ex.P6-mahazar. PW-14 also seized the fuse carrier under Ex.P8-mahazar in the presence of

witnesses. Thereafter, PW14 sent the accused to prison and sent the seized articles to the Judicial Magistrate under Form-95 for chemical examination. PW-14 also examined the Tahsildar, who had issued the documents in respect of the lands standing in the name of appellant/A1 Shanmugam and his family and finally, PW-14 completed his investigation and laid charge sheet against the accused under Section 302 IPC and Section 135(1)(A) of Indian Electricity Act.

[e] It is seen that on the side of the prosecution, PW-1 to 14 were examined and Exs.P1 to 23 were marked and M.Os.1 to 4 were also marked. Accused were examined under Section 313(1)(b) Cr.P.C. and they denied the prosecution version against them. On the side of accused, they examined 2 witnesses and marked Ex.D1 to D6.

4. Upon consideration of the oral and documentary evidence, the Trial Court acquitted A1 and A2 for the offences u/s. 135(1)(a) of the Indian Electricity Act, however convicted the appellant/A1 as stated supra, aggrieved by which, the present appeal is preferred by him.

5. Mr.V.Padmanaban, learned counsel for the appellant, while assailing with the impugned judgment of conviction, would vehemently contend that the entire prosecution case suffers from serious infirmities and according to him, the prosecution has miserably failed to prove the case beyond reasonable doubt and put forward the following contentions:- He has also filed his written submissions.

[a]The documents filed by the prosecution which have been relied on by the trial Court are contradictory with the evidence of the eye witness and have not been proved in the manner known to law.

[b] As per the evidence of PW1, wife of the deceased, there exists a Transformer 20 feet from the scene of occurrence and from the Transformer, wires had been drawn to various lands which is also corroborated by the evidence of PW2 and thus, due to the winds, one of the wires had got cut and fallen on the deceased and died due to the same and the same is the pleadings in OS.No.74 of 2008 on the file of Subordinate Judge, Kancheepuram filed by PW1, wife of the deceased.

[c] O.S.No.74 of 2008 has been filed by PW1 seeking for compensation and in the specific pleading in the suit that due to high wind, the wires had got snapped and had fallen on the deceased and PW5 in this case had also deposed to the said effect in the said suit and in view of the above, the appellant is liable to be acquitted.

[d]PWs.3 and 4 are interested witnesses and that they went to sell SOC, the subscription of Tamil Osai paper to the appellant and as such, their evidences have to be rejected.

[e] PW8, an employee of TNEB, in his evidence stated that taking of electricity from a place of the land of the appellant herein to another land was not an offence and they were permitted to carry the same by way of bamboo poles planted in their lands and it is the accepted case of the said witness that the said service connection was not in the name of the appellant or co-accused.

[f] There is a delay in lodging the FIR as it could be seen that the FIR had been lodged on 24.04.2007 at 9.00 a.m. and the same has been reached to the Court only at 6.35 p.m. on 24.04.2007 though the Court is only at a distance of 200 meters from the Police Station.

6. Learned counsel for the appellant mainly contended that PW1 is not an eye witness to the occurrence, as it is seen from her evidence. Similarly, PWs 2 to 5 are also not eye witnesses to the occurrence. The learned counsel for the appellant drew the attention of this Court to the evidence of PW1 in her cross examination has clearly admitted that she had filed a suit in O.S.No.74 of 2008 on the file of the Subordinate Court, Kancheepuram claiming compensation and the same is still pending wherein it is averred that on 24.04.2007, when the husband of the plaintiff (PW1) viz., the deceased Ravi, was working in his field by removing the grass on the ridges of the land there was a strong wind, because of that, the wire which was leading to his land was cut off and the same touched the deceased Ravi who died due to electrocution for which she (PW1) and claimed compensation from the Electricity Department as well as State as the death was caused due to Electrocution. However, the prosecution case is entirely self contradictory to the averments made in the said suit, PW1/the defacto complainant herself.

7. Per contra, Mr.V.M.R.Rajentren, learned Additional Public Prosecutor would contend that the prosecution has established its case through clear and cogent evidence of P.Ws.2,3, 4, 5, who are the eyewitnesses to the occurrence and the Court below has rightly convicted the accused under Section 302 IPC and prayed to confirm the conviction and sentence imposed on the appellant.

8. Considering the above submissions, the point that arise for consideration are :

(1) whether the deceased was murdered by the accused by passing electricity supply on him or died due to electrocution, as alleged and averred in O.S.No.74 of 2008?

(2) whether the conviction and sentence imposed by the trial Court is correct or not?

9. Though the learned counsel for the appellant raised various grounds in the Memorandum of appeal as well in his written submission, he would mainly focus his argument to the effect that the complainant P.W.1, wife of the deceased Ravi

has filed the suit in O.S.No.74 of 2008 before the learned Subordinate Judge, Kancheepuram, claiming compensation of Rs.6,00,000/- for the death of her husband on the ground that due to heavy rain and wind, the electricity wire snapped and fell on the deceased which resulted in the death of her husband due to electrocution and that resulted on account of the gross negligence of the Electricity Board in maintaining the electric wires. When that being the case of PW1 before the Civil Court, the entire version of prosecution could not be believed. The defacto complainant (PW1) who is none other than the wife of the deceased is not entitled to take an inconsistent plea, one for the prosecution case and another for getting compensation by way of filing of a suit against the Electricity Board.

10. It is also seen that PW2, who has been cited as eye witness on the side of the prosecution, in her cross examination, has admitted that she does not know who were all present at the time of occurrence. Like wise, PW3 to 5 have also specifically not deposed about the passing of electricity on the deceased by the act of the accused so as to cause his death.

11. The entire case of prosecution vests on the evidence of PW1 to PW5. However a perusal of the evidence of PW1 to PW5 would clearly show that their evidence is self-contradictory and not sufficient to base the conviction. As stated earlier, in the Civil Suit filed by PW1, she has averred that death was caused to her husband due to falling of wire during wind on the deceased. Contrary to the said averment, PW1 lodged complaint Ex.P1 stating that her husband was murdered by the accused by passing supply of electricity on him. The self contradictory version of the said prosecution evidence would show that the prosecution has not established the alleged guilt against the appellant/A1.

12. In this connection, it is also relevant to look into the evidence of PW11-Dr.Tamilvanan, who conducted autopsy on the body of the deceased and issued Ex.P10, Postmortem Certificate. In his evidence, as well in Ex.P10-Postmortem Certificate, PW11 stated that the death might have been caused due to electrocution, resulting Cardio respiratory arrest.

13. It is also relevant to refer to the evidence of PW8 - Venkatesan, Official of TNEB. In his evidence, PW8 stated that TNEB has not received any complaint regarding theft of energy and also the death of the deceased due to passing of supply of electricity by the accused. When that being the evidence of PW8, the evidence of PW8 could not be useful to prove the prosecution case.

14. In view of all the above, we find lot of infirmities in the judgment of the trial court. Therefore, we are of the considered view that the prosecution has failed to establish the case beyond reasonable doubt as against the appellant/A1 is that he has caused the death of the husband of the

complainant in order to convict him under Section 302 IPC or Section 135(1) (a) of the Indian Electricity Act.

15. In the result, the Criminal Appeal is allowed; the conviction and sentence imposed by the trial Court is set aside. The fine amount, if any, paid by the appellant is ordered to be refunded. The bail bond, if any executed, shall stand cancelled.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

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To

1.The District & Sessions Judge II,
Kancheepuram.

2. -do- Through The Principal Sessions Judge,
Chengalpattu.

3. The Inspector of Police,
B-3, Kanchi Taluk Police Station,
Kancheepuram, Kancheepuram District
(Crime No.403 of 2007)

4. The Public Prosecutor, High Court, Madras.

5. The Judicial Magistrate No.II, Kancheepuram.

6. -do- Through The Chief Judicial Magistrate, Chengalpattu.

7. The Superintendent, Central Prison, Vellore.

+ 1 cc to Mr.R. Karthikeyan, Advocate Sr.53357

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KSJ(CO)

Eu 29.1.16