

Bail Slip

The Appellant/Accused namely Ramesh, in SC.No.17/2006 on the file of the Principal Sessions Court, Vellore was directed to be released on bail in and by the order of this court dt. 26.02.2007 made in Crl.MP.1/2007 in CA.194/2007 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.194 of 2007

Ramesh

... Appellant/Accused

v.

Special Deputy Superintendent of Police,
Gudiyattam Rural Police Station,
Gudiyattam, Vellore District.
(Crime No.948/2004)

... Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374 CrPC. against the judgment of conviction and sentence, dated 07.02.2007 made in S.C.No.17 of 2006 on the file of the learned Principal Sessions Judge, Vellore.

For Appellant : Mr.R.Margabandhu

For Respondent : Mr.V.Arul

Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal arises out of the Judgment of conviction and sentence, dated 07.02.2007 made in S.C.No.17 of 2006 on the file of the learned Principal Sessions Judge, Vellore, whereby the appellant/accused was convicted and sentenced as follows:

Offence under Section	Sentence
43 of Indian Electricity Act	To pay a fine of Rs.300/-, in default in payment, to undergo two months simple imprisonment.

Offence under Section	Sentence
44 of Indian Electricity Act	To undergo two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default in payment to undergo three months rigorous imprisonment.
304 (2) IPC	To undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default in payment to undergo six months rigorous imprisonment.
201 IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- in default in payment to undergo three months rigorous imprisonment.
The sentence are ordered to be run concurrently.	

2.The case of the prosecution is as follows:

(i)P.W.4/Ayyappan, who is a resident of Mordhana Village in Gudiyatham Taluk, in the year 2004, has grown flowers in his land and he is residing half a kilometer from his land. At that time, he used to switch on the light in the evening and switch off the light in the morning. One day, in the morning, at about 6.00 a.m., when P.W.4 went to his land to switch off the light, he saw something like baby in the well. So, he made an alarm and immediately around 100 to 150 persons came to that place. At that time, one Venkatesan, a village menial came to that place and informed to P.W.1/Venkatesan, Village Administrative Officer that one dead body was floating in the well belong to P.W.4/Ayyappan. Thereafter, P.W.1 went to the place of occurrence and then, went to the Police Station and lodged a complaint/Ex.P.1. Then, P.W.1 informed about the occurrence to Tahsildar, Gudiyatham. Thereafter, the police party and officers from Revenue Department went to the place of occurrence. Then, the dead body was taken out from the well and it was identified as Egan @ Egambaram son of Chinnappan, aged about 27 years.

(ii)P.W.10/Ramalingam, Sub-Inspector of Police, Gudiyatham Rural Police Station received the complaint/Ex.P.1 from P.W.1 and registered a case in Crime No.948 of 2004 under Section 174 Cr.P.C. and prepared the printed FIR/Ex.P.13. Thereafter, P.W.10 sent the FIR to the Tahsildar and other copies relating to the case to concerned officers and sent the case to Deputy Superintendent of Police for further investigation.

(iii)P.W.11/Loganathan, Inspector of Police, Gudiyatham Rural Police Station took up the case for further investigation and went to the place of occurrence and prepared the observation mahazar/Ex.P.14 and drew the rough sketch/Ex.P.15. P.W.11 conducted inquest on the

body in the presence of Panchayatdhar and the inquest report was marked as Ex.P.16. Thereafter he submitted a requisition/Ex.P.9 for post mortem of the body through Chandrasekar, Head Constable. Thereafter, he examined the witnesses, namely, Venkatesan, Samipillai, Venkatesan, Ayyappan, Raman, Neealammal and recorded their statements. Then, he sent the FIR to Deputy Superintendent of Police for investigation.

(iv) P.W.8/Dr.Thirugnanam, on receipt of requisition letter from P.W.11 through Chandrasekar, Head Constable conducted the post mortem. He opined that there are two linear charred black wound around both the knees. He further opined that the stomach of the dead body contains food materials with alcohol smell. In the post mortem certificate/Ex.P.11, finally it is opined that the deceased would have died due to cardio respiratory arrest because of electrocution.

(v) P.W.12/Arjunan, Deputy Superintendent of Police, Gudiyatham took up the case for investigation and on 25.10.2006 at about 8.00 a.m., he arrested the accused, Ramesh in the Gudiyatham Palamner Road and recorded the confession statement of the accused in the presence of P.W.2/Eganathan, Deputy Tahsildar and Venkatesan. Thereafter, he seized M.O.1 to M.O.4 under the seizure mahazar/Ex.P.5 and then, he sent the accused to remand to judicial custody. Then, P.W.12 altered the section 174 Cr.P.C to Sections 304, 201 IPC and 3(2)(5) of SC/ST Act and prepared the Alteration Report/Ex.P.17. Thereafter, P.W.12 along with P.W.2/Eganathan and Venkatesan, Village menial, P.W.12 went to the place of occurrence and in their presence, he prepared the observation mahazar/Ex.P.3 and drew rough sketch/Ex.P.18. Then, P.W.12 took photographs of the dead body and the place of occurrence through P.W.7/Baskaran, photographer and the photographs are marked as Ex.P.6. Thereafter, P.W.12 submitted a requisition/Ex.P.19 for sending the hyoid bone for chemical analysis and through the letter/Ex.P.20 of the Judicial Magistrate, the hyoid bone was sent for chemical analysis. P.W.12/Arjunan, also recorded the statement of P.W.6/Boshadri, who was working as Junior Engineer in the Electricity Department. Thereafter, P.W.12 got transferred from Gudiyatham.

(vi) P.W.13/Murugesan, Deputy Superintendent of Police, Gudiyatham took up case in Cr.No.948 of 2004 for further investigation. He examined P.W.8/Dr.Thirugnanam on 03.03.2005. He also examined Dr.Srinivasa Ragavan in General Hospital, Chennai and recorded his statement and received the Anthropology report. On 16.03.2005, he submitted a requisition to P.W.9/Meganathan, Tahsildar, to give community certificate of both the accused and the deceased. P.W.9/Meganathan issued the community certificates, which were marked as Ex.P.11 and Ex.P.12.

After completing the investigation, P.W.13/Murugesan, filed the charge sheet against the accused under Sections 304 , 201 IPC, Sections 43 and 44 of Indian Electricity Act and Section 3(2)(5) of SC/ST Act.

3.The learned trial Judge after following the procedure framed necessary charges against the accused. Since the accused pleaded not guilty, the trial Court examined P.W.1 to P.W.13 and marked Exs.P1 to P20 and M.O.1 to M.O.4. The trial Court placed the incriminating evidence before the accused and the accused denied the same in toto. On the side of the defence, no witness was examined and no documentary evidence was marked. On considering the oral and documentary evidence, the trial Court acquitted the accused under Section 3(2)(5) of SC/ST Act and convicted the accused under Sections 304(ii), 201 IPC and Sections 43 & 44 of Indian Electricity Act as stated above.

4.Challenging the conviction and sentence passed by the Trial Court, the learned counsel appearing for the appellant raised the following points:

(i) There is no eye witness for commission of offence and the case is based on circumstantial evidence. But the link of each hypothesis of genesis has not been proved by the prosecution beyond all reasonable doubt and that factum was not considered by the Trial Court.

(ii)Even though the appellant was convicted for offence under Sections 43 and 44 of Indian Electricity Act but after the new Act came into effect, only the penal provision under Section 135 of Indian Electricity Act. The occurrence said to be taken place on 21.10.2004 but the Amended Act 36/2003 came into force much prior to the date of occurrence. But, the Trial Court has not considered the said fact.

(iii)There is no evidence to show that this appellant is the owner of the land and also the motor pumpset.

(iv)Even though P.W.6/Boshadri, Junior Engineer has been examined, nothing has been produced to show that the appellant is the owner of the two service connection.

(v)Further, the death of the deceased was due to electrocution has not been proved by the prosecution. P.W.8/Dr.Thirugnanam, in his cross examination has clearly admitted that he has not mentioned that the symptoms of death due to electrocution. He further submitted that the deceased was in a inebriated mood at the time of death and that factum was not considered by the Trial Court.

(vi)Hence, he prayed for setting aside the conviction and sentence imposed by the Trial Court.

5. Resisting the same, the learned Government Advocate (Crl. Side) would submit that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

6. The case of the prosecution is that on 22.10.2004 at about 8.00 a.m., one Venkatesan, Village Menial has received the information that one dead body was floating in the well belonging to P.W.4/Ayyappan. Immediately he went to the place of occurrence and witnessed the same and he has given a report/Ex.P.2 to P.W.1/Venkatesan, Village Administrative Officer and then P.W.1 went to the place of occurrence and witnessed that a dead body was floating in the well belonging to P.W.4. So, he went to the police station and given a complaint/Ex.P.1 along with the report/Ex.P.2 given by the Village Menial and on that basis, P.W.10/Ramalingam registered a case in Cr.No.948 of 2004 under Section 174 Cr.P.C. and prepared the printed FIR/Ex.P.13. During the investigation, it was came to know that the death of the deceased was due to electrocution of wire in the offence and to screening the evidence, the appellant thrown the dead body in the well belonging to P.W.4. Therefore, the case is not based on the eye witness and the case is based on the circumstantial evidence. So, it is the duty of the prosecution to prove each and every genesis of hypothesis without any break in the chain.

7. It is admitted fact that the charge has been framed under Section 304(ii) IPC and hence, there is no motive for commission of offence. The only point is that the appellant herein in order to safeguard his crops from Wild Boar, he has electrocuted the fence and the deceased alleged to have touched the fence, thereby, he sustained two injury on both the knee which leads to his death. After witnessing the death of the deceased, the appellant taken the dead body and thrown into the well belonging to P.W.4. But, admittedly, there is no evidence to show that the appellant is the owner of the property and also he owned the motor pumpset. Even though P.W.6/Boshadri, Junior Engineer, in his evidence, has stated that in his presence, the appellant/accused alleged to have demonstrated how the alleged occurrence taken place, but Ipse Dixit of P.W.6, there is no other evidence because the arrest itself is not proved by the prosecution. There is no evidence to show that the appellant/accused himself has taken the body of the deceased and thrown into the well belonging to P.W.4. P.W.4, in his evidence, has stated that he is the owner of the motor pumpset and daily in the evening he used to switch on the light and go to his house and in the morning, he switch off the light. On the date of occurrence, he went to the pump set to switch off the light and at that time, he came to know that one body was floating in the well, then only he made an alarm and then villagers came and then Village Menial came and given a report and on that basis, complaint has been given by P.W.1/Village Administrative

Officer. But there is no iota of evidence to show that the appellant herein was the owner of the motor pumpset.

8.It is pertinent to note that it is true that as per the evidence of P.W.9, the deceased belongs to Scheduled Caste community as per Ex.P.11 and the appellant/accused belongs to Hindu Chengamam as per Ex.P.12. But there is no evidence to show that the appellant/accused knowing the fact that the deceased belongs to Scheduled Caste community and committed the offence. In such circumstances, I am of the view that the Trial Court has rightly acquitted the appellant/accused under Section 3(2)(5) of SC/ST Act.

9.The death of the deceased is not natural and it is homicidal. It is to be decided whether the death of the deceased is due to electrocution, if it is so, whether it is accidental or intentional. But to prove the same, P.W.8/Dr.Thirugnanam has been examined and he has given a report/Ex.P.10, wherein he has stated that the deceased died due to cardio respiratory arrest because of electrocution. But, on perusal of cross examination of P.W.8, wherein he has fairly conceded that he has not mentioned the symptoms for death due to electrocution. Furthermore, in the Postmortem Certificate, it was stated that the stomach of the deceased consist of food materials with alcohol smell. So, there is evidence to show that at the time of death, the deceased was in an inebriated mood.

10.The learned Government Advocate (Crl. Side) would submit that M.O.1 to M.O.4 were seized from the accused and he also demonstrated the same and that factum was rightly considered by the Trial Court. But, during the cross examination a suggestion was posed that wooden logs and wooden pole in all houses in the Villages will be available in normal course but wire will not be the specific material, that too, in the Village and that factum was not considered by the Trial Court. I am unable to understand that how the investigation has roped this appellant in the commission of offence without any iota of evidence from any of the witnesses.

11.P.W.3/Thiliga, the wife of the deceased has stated that the deceased was brewing alcohol and doing illicit liquor business. P.W.3 was arrested and she was in Women Prison at the time of commission of offence. She has deposed that the deceased would have died only due to police. She has stated that when the police people chased the deceased, he gone there and fell down and he has been thrown into the well. In such circumstances, there is no evidence before this Court to connect the appellant in this case based on the circumstantial evidence. First and Foremost, it is the duty of the prosecution to prove that the deceased was last seen along with the accused, since the case is based on the circumstantial evidence. But, here there is no evidence. The accused in the Section 313 Cr.P.C. questioning has stated that he was ploughing the land and at that time, he heard the noise and gone to the place of occurrence and on

that basis, the Trial Court has stated that the appellant/accused possessed land and electric motor pump set and he had taken electricity for his property and thereby committed the offence, only on the presumption the Trial Court convicted.

12.As per the criminal jurisprudence, conviction cannot be based on conjectures and surmises and the prosecution ought to have prove that the accused is guilty of offence beyond all reasonable doubt. But, here the prosecution has miserably failed to connect the link the accused with the commission of offence. So, the prosecution has miserably failed to prove that the accused is guilty either under Section 304(ii) IPC or screening of evidence under Section 201 IPC. Hence, the judgment of conviction and sentence passed by the Trial Court against the accused under Sections 304(ii) and 201 IPC is hereby set aside.

13.It is also appropriate to incorporate the object and reason for passing of the Electricity Act, 2003, namely, The Bill seeks to replace the Indian Electricity Act, 1910, The Electricity (Supply) Act, 1948 and The Electricity Regulatory Commissions Act, 1998. Hence, once the Act came into effect and the alleged occurrence said to have taken place after that, then the prosecution has wrongly filed the charge under Sections 43 and 44 of the Indian Electricity Act instead of filing under Section 135 of the Indian Electricity Act. Furthermore, there is no evidence to show that the death of the deceased is due to electrocution and also that the appellant herein has committed the theft of electricity. In such circumstances, I am of the view that the prosecution has miserably failed to prove that the accused is guilty under Sections 43 and 44 of the Indian Electricity Act. Hence, the judgment of conviction and sentence passed by the Trial Court against the accused under Sections 43 and 44 of the Indian Electricity Act is hereby set aside.

13.In fine,

(a)The Criminal Appeal is allowed.

(b)The Judgment of conviction and sentence, dated 07.02.2007 made in S.C.No.17 of 2006 on the file of the learned Principal Sessions Judge, Vellore is hereby set aside.

(c)The appellant/accused is acquitted from the charges levelled against him.

(d)The fine amount paid by the appellant shall be refunded to him.

(e)Bail bond, if any executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

1.Special Deputy Superintendent of Police,
Gudiyattam Rural Police Station,
Gudiyattam, Vellore District.

2.The Principal Sessions Judge, Vellore

3.The Public Prosecutor, High Court, Madras.

4.The Record Keeper
Criminal Section, High Court, Madras.

5. The Judicial Magistrate-I, Gudiyatham.

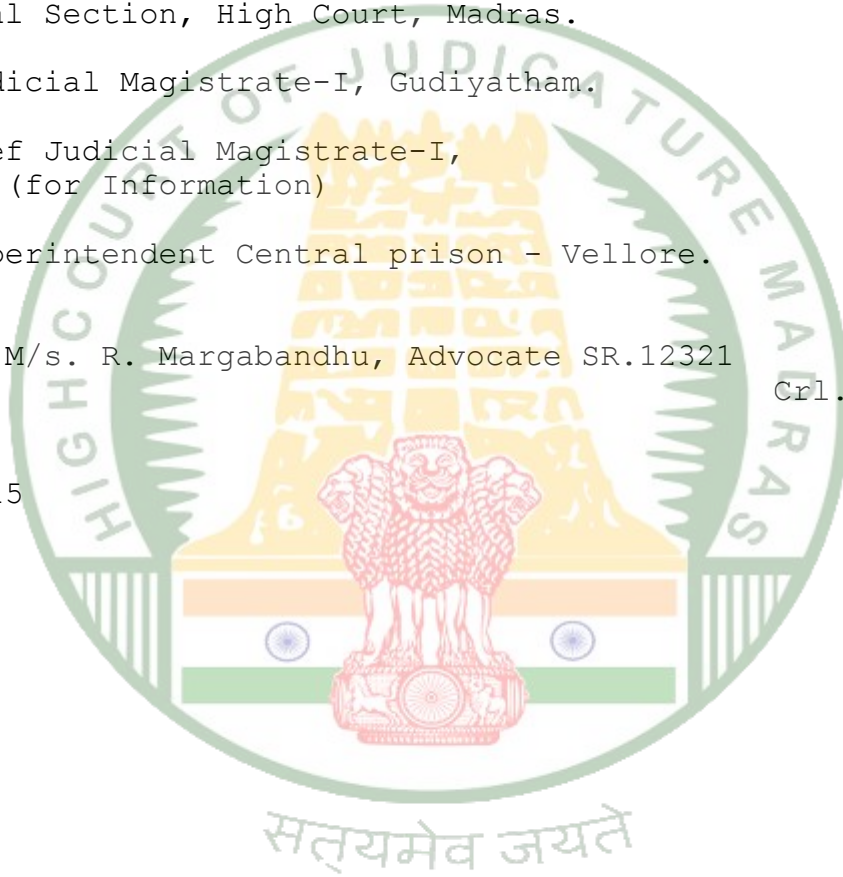
6.The Chief Judicial Magistrate-I,
Vellore (for Information)

7. The Superintendent Central prison - Vellore.

+ 1 cc to M/s. R. Margabandhu, Advocate SR.12321

CrI.A.No.194 of 2007

TS (CO)
Eu 30.03.15



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