

Bail Slip

The Appellant/Accused Nos 1 & 2 viz., Shanmuganathan, S/.Sannasi(died), aged about 40 years and Sannasi, S/o.Arumugam, aged 68 years were directed to be released on bail as per order of this court dated 09/07/2009 in MP.Nos.182 of 2009 in Cr1.A.351/09.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

Coram

The Honourable Mr.Justice R.PONGIAPPAN

Criminal Appeal No.351 of 2009

1.Shanmuganathan

2.Sannasi (died)

...Appellants/Accused Nos.1 & 2

Versus

State rep. by its
Inspector of Police,
New Hope Police Station,
Nilgiris District.
Crime No.87 of 2004

...Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure praying to admit the appeal on file, call for records in S.C.No.22 of 2008 on the file of the Hon'ble Sessions Judge, Nilgiris at Uthagamandalam dated 12.06.2009 and set aside the same.

For Appellants : Mr.R.Ganesh Kumar

For Respondent : Mrs.T.Savitha
Govt. Advocate(Cr1.Side)

J U D G M E N T

This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the judgment and conviction imposed on the accused 1 & 2 by the learned Sessions Judge, Nilgiris at Udhagamandalam in S.C.No.22 of 2008 dated 12.06.2009.

2. The appellant is the first accused in S.C.No.22 of 2008 on the file of the learned Sessions Judge, Nilgiris at Udthagamandalam. In the trial Court, the father of the accused/appellant, Sannasi was arrayed as second accused and as of now he is no more. Accordingly, the conviction and sentence passed as against the second appellant is closed as abated. The first appellant was charged for the offence under Section 304 (ii) of I.P.C.

3. By judgment dated 12.06.2009, the Trial Court convicted the accused/appellant under Section 304(ii) of I.P.C and sentenced him to undergo three years rigorous imprisonment and sentenced to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for a period of one year. Challenged the said conviction and sentence, the first appellant/accused is before this Court with this Criminal Appeal.

4.1. The case of the prosecution in brief is as follows:

The deceased Chandran is a resident of Mullai Nagar, O' Valley, Gudalur. P.W.1, Amudhaselvi is his wife. Both of them are coolies by profession. On 10.11.2004, the deceased Chandran went out from the house to collect firewood. Even after the late night, he never returned to the house and on the next day morning, P.W.1 went in search of him and she found the dead body of Chandran in the western side of her house. Immediately, she informed the death of her husband to her mother-in-law and sister-in-law. Further, she informed the same to her relatives. Thereafter, all of them went to the place of occurrence and found the dead body of the Chandran.

4.2. P.W.1 went to the New Hope Police Station and given a complaint to P.W.9, Albert, the then Sub-Inspector of Police attached to New Hope Police Station. Ex.P.1 is a complaint given by P.W.1. On receipt of the complaint, P.W.9 registered a case in Crime No.87 of 2004 under Section 174 of Cr.P.C. Ex.P.13 is the First Information Report (FIR). After the registration of the case, P.W.9 went to the place of occurrence and he prepared the Observation Mahazar under Ex.P.3, in the presence of P.W.5, Dhanaraj and one Malaiappan. Then, he drawn a Rough Sketch under Ex.P.14. Thereafter, he conducted enquiry and prepared a Inquest Report under Ex.P.15. Further, from the place of occurrence, he seized three small bamboo sticks and also a shirt and banian, which were marked as M.Os.1 to 3 respectively. He had also recovered one Aruvaal i.e., M.O.4 under Ex.P.4, Seizure Mahazar.

4.3. After completing the above formalities, P.W.9 made arrangements for shifting the dead body of the deceased from the place of occurrence to the Government Hospital, Gudalur. During

investigation, he examined P.W.1 to 5 and recorded their statements. After sending the dead body of the deceased to Government Hospital, he sent a requisition to the Hospital Authorities for conducting autopsy over the dead body of the deceased. On 11.11.2004, P.W.8, Boopathy, then Assistant Surgeon attached to the Government Hospital, Gudalur received the requisition given by P.W.9 under Ex.P.9. During the time of postmortem, P.W.8 found the following injuries on the dead body.

1. An irregularity lacerated charred wound on the middle of the palmar aspect of the right thumb about the size of 2cm x $\frac{3}{4}$ x $\frac{1}{2}$ cm skin over the wound is rubbery in consistency.

2. An irregularly lacerated wound on the proximal part of the palmar aspect of right index finger about the size of 3cm x $\frac{3}{4}$ cm x $\frac{1}{2}$ cm skin over the wound is rubbery in consistency.

3. A charred abrasion on the distal part of the outer aspect of left forearm just above the wrist about the size of 10 cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm. The skin over the wound is rubbery in consistency."

5. After completing the process of postmortem, P.W.9 preserved the viscera of the deceased for chemical examination. Thereafter, after receiving the Viscera Report, he gave opinion as the deceased would appear to have died of cardio respiratory arrest due to the electric shock. Ex.P.12 is the Postmortem Report and Ex.P.10 is the Viscera Report. After obtaining the opinion from the Medical Officer, P.W.9 altered the Section of law as 304(ii) of I.P.C under Alternation Report, Ex.P.16. Thereafter, entire records have been placed before P.W.10, Kanagaraj who is the then Inspector of Police, New Hope Police Station for further investigation.

6. After took up the case for further investigation, P.W.10 on 30.11.2004, at about 11:00 a.m rushed to the place of occurrence and prepared the Observation Mahazar under Ex.P.17 in the presence of P.W.5, Dhanaraj and P.W.6, Rajendran. He also drawn a Rough Sketch under Ex.P.18 and on the same day, at about 13:00 hours, he arrested the appellant and recorded the confession statement in front of P.W.5 & 6.

7. As per the willingness made by the appellant in the confession statement, P.W.10 recovered four electric wires from the House of first appellant/accused. Thereafter, on 20.11.2004, he examined P.W.7, Assistant Engineer, Tamil Nadu Electricity Board, Gudalur. Further, after received the postmortem report, he examined the Doctor who conducted the postmortem and recorded her statement. Finally, he came to the positive conclusion that the accused committed the offence under Section 304(ii) of I.P.C and laid a final report under Section 173(ii) of Cr.P.C before the Committal Court.

8. Based on the above materials, the trial Court framed the charges against the first appellant/accused for the offence under Section 304(ii) of I.P.C. The accused denied the same. In order to prove the case of prosecution, as many as 10 witnesses were examined viz., P.Ws.1 to 10 and 19 Documents were also marked viz., Ex.Ps.1 to 19 besides 5 M.Os.

9. Out of the said witnesses, P.W.1 has stated in her evidence that after knowing the death of her husband, she lodged a complaint before the Police Authorities. P.W.2, the mother of the deceased after knowing the occurrence through P.W.1, she went to the scene of occurrence and gave a statement before the Police Officer. P.W.3, a relative of the deceased deposed that after knowing about the death of Chandran, she went to the scene of occurrence along with P.Ws.1 & 2. P.W.4 is the Photographer gave evidence in regard to the taking of photographs in three angles from the scene of occurrence. P.W.5, a relative of the deceased deposed evidence as to the lying of dead body and stands as a witness at the time of preparing the Observation Mahazar by P.W.9 & 10.

10. According to the case of prosecution, P.W.6 is the witness attested in the Observation Mahazar and Seizure Mahazar, but during the time of giving evidence before the Court, he is not supported the case of prosecution, due to which the learned Public Prosecutor in the trial Court treated P.W.6 as a hostile witness. P.W.7, Assistant Electrical Engineer gave evidence as after knowing the death of the deceased through a line man, he went to the scene of occurrence and found that there is no symptoms of using the electric connection for the purpose other than the domestic use. P.W.8 conducted Autopsy on the dead body of the deceased was opined as the deceased would appear to have died of cardio respiratory arrest due to electric shock. The remaining witnesses examined are P.Ws.9 & 10 who are the Police Officers and they have stated in their evidence with regard to the registration of the case and the manner of investigation.

11. The learned Trial Judge with reference to the incriminating materials adduced by the prosecution, accusation of the accused under Section 313 of Cr.P.C and for which the appellant pleaded not guilty and denied the evidence given by the prosecution witnesses as a false one. He did not choose to examine any witnesses nor did he mark any documents on his side. The Trial Court Judge after perusing the materials placed and considering the arguments advanced on both sides convicted and sentenced the first appellant/accused. Challenging the same, the present Appeal has been filed.

12. Heard the learned counsel on both sides and perused the records carefully.

13. The learned counsel appearing for the first appellant/accused would submit that on going through the entire evidence let in by the prosecution are not in a form to connect the accused with the alleged crime. Further, he would contend that there are lot of contradictions available in the evidence of P.Ws.5 & 6. Further, he made submissions in regard to the recovery of M.Os, the witnesses attested in the Mahazar have not been properly placed the real picture before the Trial Court, he would further contend that the above contradictions create a serious doubt on the side of prosecution case.

14. Per contra, the learned Government Advocate would contend that eventhough all the prosecution witnesses are relatives to the deceased, the said reason alone is not sufficient to disbelieve the case of prosecution. Further, she would contend that the evidence given by P.Ws.9 & 10 clearly proved that the appellant and his father alone had committed this offence and they are the persons responsible for the death of the deceased Chandran.

15. I have considered the rival submissions made on either side. In this case, it is an admitted fact that only due to electrocution the deceased Chandran was died. But on going through the records submitted by the trial Court in this case, there is no charge have been framed under the provisions of Indian Electricity Act, 2003 which shows the trial court, the trial has been commenced mechanically without looking into the correct provision of law.

16. In the said circumstances, according to the evidence of P.W.1 to 4, who are the relatives to the deceased, it appears that they have went to the scene of occurrence only after knowing about the death of the deceased. In other words, the evidence given by them shows that the appellant and the deceased are having a previous enmity with regard to some other reason.

17. In the said circumstances, it is a settled position of law in a case, based on the circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubt and such proved circumstances should form a complete chain without any break. Now in a case on hand, for the charge under Section 304(ii) of I.P.C, the content of the prosecution is that the accused has put up a electric wire fencing around his house and the deceased was electrocuted. To prove the same, the evidence given by P.W.1 to 4 is not at all in the form of connecting the appellant to the alleged crime. The only evidence available against the first appellant/accused is the confession statement as well as the recovery made thereon. To prove that P.W.5 stated about the recovery made by the Investigating Officer, now applying the said evidence with

the evidence made by P.W.7, he stated at the time of seeing the occurrence place, there is no symptoms are available for giving electricity connection to the fence maintained by the first appellant/accused. On the basis of statement disclosed by the first appellant/accused, some bamboo sticks and a small electric wire alone have been recovered by the Investigating Officer, so we cannot come to the conclusion that the first appellant/accused alone committed the offence. Apart from that absolutely there is no evidence to show that the first appellant/accused had put an electric wire fencing. Eventhough, the Postmortem Report concludes that the death had happened only due to the electrocution, only because all the said reason, it cannot be presumed that he had died due to the electric wire put up by the appellant/accused. In the absence of sufficient evidence, mere recovery of some wires and bamboo sticks alone is not sufficient to hold that the prosecution approached the Court with sufficient materials.

18. I am of the considered view that the prosecution failed to prove the circumstances which erringly pointing out the guilty of the accused. Hence, conviction and sentence imposed on the first appellant/accused by the trial Court is liable to be set aside. The Court below without considering the evidence with proper perspective convicted the accused.

19. In the result, this Criminal Appeal is allowed and the judgment passed by the learned Sessions Judge, Nilgiris at Uthagamandalam in S.C.No.22 of 2008 dated 12.06.2009 is set aside. First appellant/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS V)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

To

1.The Judicial Magistrate, Gudalur.

2.The Chief Judicial Magistrate,
The Nilgirs @ Udagamandalam.

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3.The Sessions Judge,
Nilgiris at Uthagamandalam.

4.The Superintendent,
Central Prison,
Coimbatore.

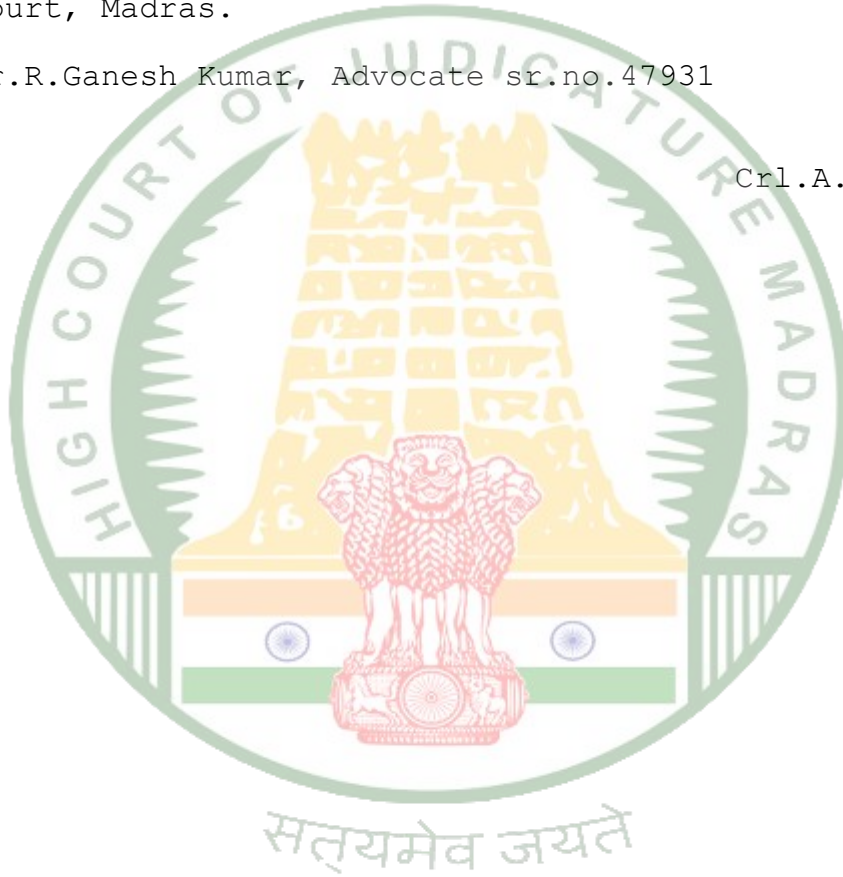
5.The Inspector of Police,
New Hope Police Station,
Nilgiris District.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Ganesh Kumar, Advocate sr.no.47931

Cr1.A.351 of 2009

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