

Bail Slip

The Appellant/1st Accused No.1, namely Adhinarayanan, aged 55 years, S/o. Govindasamy, (Accused-1, in S.C.No.293 of 2010 dated 8.3.2012 on the file of the Sessions Judge, Cuddalore)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.252 of 2012

Adhinarayanan .. Appellant/1st Accused

Vs.

The State Rep.by its
The Inspector of Police,
Thirupathiripuliyur Police Station,
Cuddalore District.
(Crime No.14 of 2010) .. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence dated 08.03.2012 in S.C.No.293 of 2010 on the file of Sessions Judge, Cuddalore and acquit the appellant.

For Appellant : Mr.S.Nagarajan

For Respondent : Mrs.T.P.Savitha

Government Advocate (Crl.side)

J U D G M E N T

The appellant is the first accused in S.C.No.293 of 2010 on the file of the Sessions Judge, Cuddalore, along with one another accused, he stood charged for the offence under Section 304 IPC and Section 135 of Indian Electricity Act, 2003. By a judgment dated 08.03.2012, the trial court convicted and sentenced the appellant to undergo 2 years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo 6 months simple imprisonment under section 304 IPC and also sentenced to undergo rigorous imprisonment for 2 years under section 135 of Indian Electricity Act, 2003. Further, the trial court has directed, the sentences imposed upon the accused to run concurrently. Challenging the said conviction and sentence, the appellant is before this court with this criminal appeal.

2.The case of the prosecution is as follows:-

i) P.W.1 Dhanapal is residing in Ramapuram. The deceased Narayanan is his brother. On 08.01.2010 at about 10.00p.m. when the deceased and the P.W.1 in a way to their field, the deceased was stuck in an electric fence and shouted for help. After hearing the cue and cry of deceased, P.W.1 ran to the scene of occurrence and on seeing the situation, he also shouted for help. On hearing the noise of P.W.1, P.W.3 Thulasidaran, one Adhinarayanan and Sivakumar came to the scene of occurrence and took the dead body of Narayanan. Thereafter, for the said occurrence, P.W.1 lodged a complaint before the Inspector of Police, Thirupapuliyur, under Ex.P1. The said occurrence was witnessed by P.W.2 (Vasudevan) and P.W.3 (Thulasidaran).

ii)P.W.8 (Anandhbabu) the then Inspector of Police, Thirupapuliyur, on receipt of complaint from P.W.1, registered a case in Crime No.14/2010 under Section 304 IPC. Ex.P6 is the printed First Information Report. After the registration of the case, P.W.9 Ezhumalai, who is the Sub Inspector of Police in the same Police Station took up the case for investigation.

iii)In the early morning at about 4.00 am, he went to the scene of occurrence and recovered the dead body. Immediately, in order to avoid law and order problem, he sent the dead body to the mortuary, Cuddalore. Thereafter, in the presence of one Dhanapal and Natesan (P.W.4), he prepared an observation mahazar under Ex.P2. Further, he drawn rough sketch under Ex.P7. After the preparation of those documents, he recovered MO1 (wooden log 4 in number) and MO2 (Iron Rods) under the cover of mahazar [Ex.P3]. Subsequently, he went to Government Hospital and prepared a inquest report under Ex.P8. After completing the above formalities, he sent the requisition to the Doctor attached to the Government Hospital, Cuddalore for conducting autopsy over the dead body of Narayanan.

iv)P.W.7 (Gejalakshmi) working as a Doctor in Government Hospital, Cuddalore received a requisition from P.W.9 and conducted the autopsy, she found the following injuries on the dead body of Narayanan.

The internal layers of the muscles of about 10 cms were found exposed in the backside of the right thigh, the skin was blackened to the length of 7 cms in the left leg bottom portion.

v)After completing the post mortem, she issued a post-mortem report under Ex.P4. Further, she gave opinion under Ex.P5, in which she has stated the deceased would appear to have died of shock due to electrocution. In continuance of

investigation, P.W.9 examined P.W.5 (Perumal), who is a Wireman in TNEB and recorded the statement. Further, he sent the skin of the deceased for chemical examination. Meanwhile, since P.W.9 was transferred from the said post, P.W.10 (Sundaravadivelu) took up the case for investigation and after perusing the records he laid a charge sheet.

vi)Based on the above materials, the trial court framed the charges against the accused as detailed in the first paragraph of this judgment, the accused denied the same. In order to prove the case of prosecution, as many as 10 witnesses were examined as PW1 to PW10 and 10 documents are marked as P1 to P10, besides 2 material objects.

vii)Out of the above witnesses, P.W.1 (Dhanapal) is the resident of East Ramapuram, he has stated on 08.01.2010 at about 9.00p.m. while he was went along with the deceased to their field, in a path just before the occurrence place, he informed to the deceased that he has to go to attend the natural call, further, he requested the deceased to go earlier. Thereafter, when at the time he follows the deceased, he heard a noise, immediately he went to the place in which the noise came and found that his brother get stuck in a electric fence and due to which the deceased heaving, immediately he shouted for help. After hearing the noise from P.W.1 (Dhanapal) P.W.3 (Thulasidaran), one Venkat, one Radhakrishnan and Balakrishnan came to the occurrence place and took the body of the deceased and take to the nearby place in which the light was present, further, it was observed that his brother was died in the spot itself. He has further stated for the said occurrence, he lodged a complaint before the Thiruppapuliur Police.

viii)P.W.2 Vasudevan is the resident of same village, he know the deceased as well as the accused. He has stated on the day of occurrence when he was on a way to his field, he had a noise from the field belongs to the accused. He has further stated after hearing the noise immediately he went to the occurrence place and found that the deceased is get stuck in a electrical fence and died.

ix)P.W.3 is also an eye witness gave evidence in support of the evidence given by PW1 and PW2. PW4 Natesan has stated on 09.01.2010 at about 7.00a.m., the Investigation Officer in this case came to the occurrence place and prepared an observation mahazar and rough sketch. Further, he has stated the said officer recovered M.O.1 and M.O.2 through the seizure mahazar. According to him, he was signed in the said documents as a witness.

x)PW5 Perumal is the lineman in the Tamilnadu Electricity Board, he has stated on 09.01.2010 he heard the news about the electrocution of the deceased. PW6 Sasikumar is the Assistant Electrical Engineer in the Tamil Nadu Electricity Board, he has stated on hearing the news through PW5, he went to the occurrence place and on enquiry he found that the accused set up a electrical fence.

xi)P.W.7 (Dr.Gejalakshmi) is the Doctor attached with the Government Hospital, Puducherry, she has stated on 09.01.2010 as per the request made by the Investigation Office in this case she conducted autopsy over the dead body of Narayanan. According to her, the death is due to the electrocution.

xii)PW8 to PW10 are the police officers have stated about the registration of the case, details of investigation and about the filing of final report in this case.

xiii)The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., for which, the accused pleaded not guilty, however, he did not choose to examine any witnesses on his side. But on the side of accused, E.B.Card for Consumer No.3, and the xerox copy of sale deed executed by the first accused in favour of Sowndarrajan are marked as Ex.D1 and Ex.D2 respectively.

xiv)After considering all the materials, the court below acquitted the second accused, and convicted the first accused / appellant as stated above. Aggrieved over the conviction and sentence, the appellant is before this Court with the present appeal.

3.Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.S.Nagarajan learned counsel for the appellant, Ms.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and also perused the records carefully.

4.The learned counsel for the appellant would contend that the evidence given by the prosecution witnesses are having lot of contradictions, according to the evidence of P.W.1 all the witnesses, who are stand as eye witness including him to the occurrence had come to the occurrence place only after hearing the noise. Further he would contend that the prosecution has not proved the fact that the electricity, which was used for setting up the electrical fence is taken either from the service connection belongs to the accused or from the electrical pole situated in the field owned by the accused. In this regard, the

officers of Tamilnadu Electricity Board did not conducted any enquiry and submit a report before the Investigation Officer, thereby this case has to be decided only based on the circumstantial evidence and not through the evidence of eye witness. Further he submits as the prosecution has not proved their case through the relevant materials. Accordingly, he prayed to allow the appeal and to set aside the conviction and sentence awarded by the trial court.

5.Per contra, the learned Government Advocate (crl.side) appearing for the respondent would contend that the occurrence had happened in the night hours, further the evidence given by PW1 clearly established at the time of occurrence he was accompanying with the deceased, moreover the evidence given by the Investigation Officer clearly proves that the electricity which was used for the electrical fence is took from the electric line situated near to the field of accused, thereby in the trial court the occurrence has clearly proved through the cogent and reliable evidence.

6.I have considered the rival submissions made on either side.

7.Initially, as per the evidence of PW2 to PW4 they are all came to the occurrence place only after hearing the noise from PW1, accordingly, they are not a eye-witness to the occurrence. However as per the evidence of PW1, the accused set up electrical fence in his field without getting any permission. The said evidence is supported through the all witnesses examined in this case. The said act is the sole reason for the death of the deceased Narayanan. So, in the said circumstances, it is the duty for the prosecution to prove the accused alone set up a electrical fence in his field. In this regard, on going through the Ex.P7 rough sketch, it was marked as the dead body of Narayanan is found near to the electrical fence, but in respect to supply of electricity, PW1 has stated in his cross examination as he did not know the service number from which the electricity was taken and the owner of the land in which the electric fence is present.

8.Further he stated in his cross examination as when at the time he reaches the occurrence place, one Thulasidharan, Radhakrishnan, Balakrishnan and Ramachandran are all present. So, the said specific evidence creates a doubt as whether he was accompanying along with the deceased during the time of occurrence or not. In otherwise, P.W.1 did not say anything about the electrical fence. So, his evidence is not sufficient to accept the case of prosecution. P.W.2 and P.W.3 alleged to be

witness to the occurrence has stated in their evidence as in the occurrence place an electric fence is present. However they did not say anything about the connectivity of electrical fence with the electricity. In this regard the officers from the Tamilnadu Electricity Board is the competent person to say about the details of setting up the electrical fence. In this regard, P.W.6 who is the Assistant Electrical Inspector has not stated anything in support of the prosecution. In his chief examination, he clearly stated only on enquiry made before the public he knows the electrical fence is the reason for electrocution. Further in his cross examination he specifically stated as he does not know in whose name the service connection stands from which the electricity took for setting up electric fence. So in the said circumstances, the remaining available evidence in this case is the evidence given by the Doctor, who conducted post mortem and the evidence of police officers. Admittedly, the said officers did not know the occurrence, only through the P.W.1 to P.W.5, they knows the occurrence in otherwise, they came to the occurrence place only after the registration of the case. In the said circumstances, PW9, who is the Investigation Officer in this case has stated as per Ex.D2 on 24.11.2009 itself (before the occurrence) the accused sold out the property to one Sowndarrajan. So the said evidence and the contents of Ex.D2 clearly established that the place in which the occurrence had happened is not belongs to the accused. Since the accused already sold the field to one Sowndarrajan, there is no necessity for him to set up electrical fence in the said land. Further with regard to the ownership, P.W.9 has stated that he did not know the service number and owner of the property. The said answers given by P.W.9 clearly shows without any efforts investigation officers in this case completed the investigation.

9. Accordingly, as per the discussion stated supra, the prosecution fails to prove the following factors in this case:

(i) The land in which the electrical fence was situated is belongs to the accused.

(ii) The prosecution fails to prove from which source the electricity taken for setting up the electrical fence. For proving the prosecution case, the said aspect is very much necessary. But without considering the said aspect perspectively, the trial court convicted the accused. Therefore, the findings arrived at by the trial court needs interference.

10. In the result, the criminal appeal is allowed. The conviction and sentence imposed upon the appellant in S.C.No. 293/2010 dated 08.03.2012 by the learned Sessions Judge,

Cuddalore is set aside and the appellant/accused is acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.III, Cuddalore.
2. The Chief Judicial Magistrate, Cuddalore.
3. The Sessions Judge, Cuddalore.
4. The Principle Sessions Judge, Cuddalore.
5. The Inspector of Police,
Thirupathiripuliyur Police Station,
Cuddalore District.
6. The Public Prosecutor, High Court, Madras.
7. The District Collector Cuddalore.
8. The Director General Public Mylapore Chennai.

Copy to: The Section Officer, Criminal Section, (Records)
High Court, Madras.

+ 1 cc to Mr. S. Nagarajan, Advocate Sr.42371

CrI.A.No.252 of 2012

GJII(CO)
EU(01/11/2018)

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