

BAIL SLIP

The Appellants/Accused 1 to 3 namely 1)Madhu @ Madhayan, 40 years S/o.Veerappan, 2)Veni @ Palaniammal, 30 years W/o.Madhu alias Madhayan 3)Alagappan, 60 years S/o.Perumal in CrI.A.No.686 of 2008 was directed to be released on bail as per order of this Court dated 17.09.2008 made in M.P.No.1 of 2008 in CrI.A.No.686 of 2008.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CrI.A.No.686 of 2008

1.Madhu @ Madhayan
2.Veni @ Palaniammal
3.Alagappan

... Appellants/Accused 1 to 3

Vs.

State by Inspector of Police,
Bangalapudur Police Station,
Erode District.
(Crime No.39/07)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the Judgment of the learned Principal Sessions Judge, Erode in S.C.No.36 of 2008 dated 26.08.2008.

For Appellants : Mr.S.Kaithamalai Kumaran

For Respondent : Mrs.T.P.Savitha
Government Advocate (CrI.Side)

ORDER

This criminal appeal is preferred by the appellants/accused A1 to A3 against the judgment of the Learned Principal Sessions Judge, Erode in S.C.No.36 of 2008 dated 26.8.2008 wherein the accused A1 and A2 convicting and sentenced under section 304(ii) (3 counts) 7 years rigorous imprisonment in the tune of fine Rs.1000/- each count in default to undergo 1 year rigorous imprisonment and A3 convicting and sentenced 2 years rigorous imprisonment under section Electricity Act 2003 section 138(a) r/w 109 IPC , under section 304(ii) (3 counts) r/w 109 of IPC

sentenced 7 years rigorous imprisonment and pay a fine of Rs.1000/- in default to undergo 1 year rigorous imprisonment and under section 201 sentenced 2 years rigorous imprisonment and fine of Rs.1000/- in default to undergo 1 year rigorous imprisonment under section 235 (2) of IPC.

2. Brief case of the appellants/accused A1 to A3

The prosecution case is that this is a case of Triple deaths, due to electrocution, which caused due to the rash and negligence act of the accused (1) Madha @ Madihian, S/o Veerappan, Adaiyur, Edapadi, now at Settukattupudur and 2. Veni @ Palaniyammal, age 30, w/o Madhu @ Madhaiyan, Settukattupudur, in erecting such a live fence, passing Electric energy through the live fence on the permission of A3 Alagappan, age 60, S/o Perumal, Thelkaradu thottam, Sanjeevarayan Koil, Perumugai Village, with intent to prevent the entering of the Forest Bores into the Ragi field cultivated by A1, taking the land on lease from A3, that occurred on 16.2.2007 at about 22.30 hours at Perumugai village. Sanjeevarayan temple, Thonkaradu lane, in the garden of Alagappan. A3 Alagappan is the owner of the land who let the same to the accused A1 and A2 on lease, who have cultivated paddy and harvested the same. They have also cultivated Ragi in the land measuring about 1/4 acre located adjacent to the Reserved Forest. The forest pigs used to enter in to the Ragi field in the night hours and caused damages to the Ragi plants. With intent to save the crops, the accused A1 and A2 have approached A3, the land lord and asked permission to erect a live fence passing electric energy through it. As such A3 permitted them to erect such a live fence. Then A1 and A2 erected such a live fence around the Ragi field, suing wires and iron wires (Kattu kambu) on 16.2.2007 at about 12.00 noon. Witness Mayilsamy S/o Manickam, Sanjeeviraiyankoil, Orambukattu thottam, deceased Moorthy, S/o Subramani, Gandhinagar, Ramasamy S/o Sengodan, Madhesh, S/o Krishna nair and the witness Perumalsamy S/o Madhaiyan, went to pluck tamarind fruit in the nearby forest. At about 7.30 PM they returned to the house of Mayilsamy. At that time Perumalsamy went to his house through a car. The deceased Moorthy, Ramasamy and Madhesh were talking with Mayilsamy upto 10.30 PM and left to Gandhinagar. In the thought that it is more distance to reach Gandhinagar through the way, and when those 3 deceased were proceeding through the Ragi field of Madhaiyan who was cultivating the said land on lease taking from Alagappan, while proceeding towards Gandhinagar when they deceased put their legs on such a live fence erected by A1 and A2, giving connection through the holder located in the front yard of the house of Alagappan, the electric energy passed through the bodies of the deceased and due to electrocution, those 3 deceased met their deaths at the spot itself. On revealing the facts A3 the land lord went to the scene, removed

such live fence after putting off the electric energy to some distance with intent to screen the evidence, informed A1, A2 and asked them to quit their residence.

3. On 17.2.2007 at 3.30 hrs, the complainant Mayilsamy, S/o Manickam, appeared at Bangalapudur Police Station and presented his written report before Head Constable so as the occurrence. On getting the same a case in Bangalapudur P.S. Cr.No.39 of 2007 under sections 304(ii), 201 of IPC and 135, 136 of the Electricity Act 2003 was registered and investigated. The complaint preferred by PW1 Mayilsamy is Exhibit-P1. The police party inspected the scene of occurrence at about 6.00 AM morning and took photographs, and conducted inquest on the deadbody and examined the witnesses. PW20 Inspector of Police arrested the appellants/accused and remanded them to judicial custody on 2.3.2007. PW22 Doctor in her report Exhibits-P27 to P30 opined that multiple sections studied show skin and few congested blood vessels in the dermis.

4. On completion of the investigation, PW23 Inspector of Police filed the final report on 2.7.2007. The appellants/accused denied their charges framed under section 304 (ii) 201 IPC and 135, 136 of the Electricity Act 2003.

5. During the trial, the prosecution examined Pws-1 to 23 and Exhibits-P1 to P31 were marked. M.O.s-1 to 13 was marked. No witness was examined on the side of the accused.

6. On completion of the trial, the Learned Principal Sessions Judge, Erode, A1 and A2 convicting and sentenced under section 304(ii) (3 counts) r/w 109 of IPC sentenced 7 years rigorous imprisonment and pay a fine of Rs.1000/- in default to undergo 1 year rigorous imprisonment and under section 201 sentenced 2 years rigorous imprisonment and fine of Rs.1000/- in default to undergo 1 year rigorous imprisonment under section 235 (2) of IPC. Aggrieved over the same, the appellants/accused filed criminal appeal.

7. The learned counsel for the appellants/accused submits that the learned judge failed to see that the case of prosecution, all the three deceased went to the forest to collect tamarind fruit, cannot be true:

a. None of the deceased carried any bag or stick (Jallakkathi) with them to fetch tamarind.

b. To enter reserve forest - an offence

c. All the witnesses depose that the deceased were working in the sugarcane crusher of PW1

8. The learned counsel for the appellants/accused submits that the learned judge failed to see that there are vital contradictions in the evidence of PW1 to PW7 regarding the place where the bodies were found, the situation of the alleged fence in the land of 3rd accused.

9. The learned counsel for the appellants/accused submits that the learned judge failed to see that the medical evidence do not support the prosecution case that the deceased died only on account of electrocution.

10. The learned counsel for the appellants/accused submits that the learned judge failed to see that there are vital contradiction between evidence of PW1 and PW11 regarding the location of fuse carrier throwing doubt about the prosecution case.

11. The learned counsel for the appellants/accused submits that the learned judge failed to see that Ex.P1 could not be the earliest report in the case. PW8 deposes that he attested the complaint but there is no attestation in Ex.P1.

12. The learned counsel for the appellants/accused submits that the learned judge failed to see that there is no recovery of clothes from the dead bodies and no evidence of putting electric fence in the scene of occurrence.

13. The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

14. I heard Mr.S.Kaithamalai Kumaran, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

15.It is seen from the evidences that all the 3 appellants/accused were not arrested in the reserve forest and they were working in the sugarcane crusher of PW1 and the Prosecution failed to prove that the bodies were found in the place owned by the appellant/accused.

16.In the case on hand, 3 persons died due to electrocution and no evidence of concrete nature adduced by the witnesses alleging that electric fence were put in the scene of occurrence. On careful reading of the evidences, there are material contradictions and serious infirmities in the evidences of PW 1 to 7 regarding the place of occurrence and where the dead bodies were found. Therefore the allegation that the alleged fence was put up by the 3rd appellant/accused cannot be sustained without supporting materials.

17.It is also necessary to say that no independent witnesses were examined by the respondent police near the scene of occurrence and the neighbors residing thereby.

18.In the result,

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellants/accused A1 to A3 in S.C.No.36 of 2008 dated 26.8.2008, on the file of the Learned Principal Sessions Judge, Erode, is set aside.

b) The appellants/accused are acquitted from all the charges and the fine amount if any paid by the appellants/accused shall be refunded by the trial Court.

c) The bail bond if any executed by the appellants/accused is stands cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

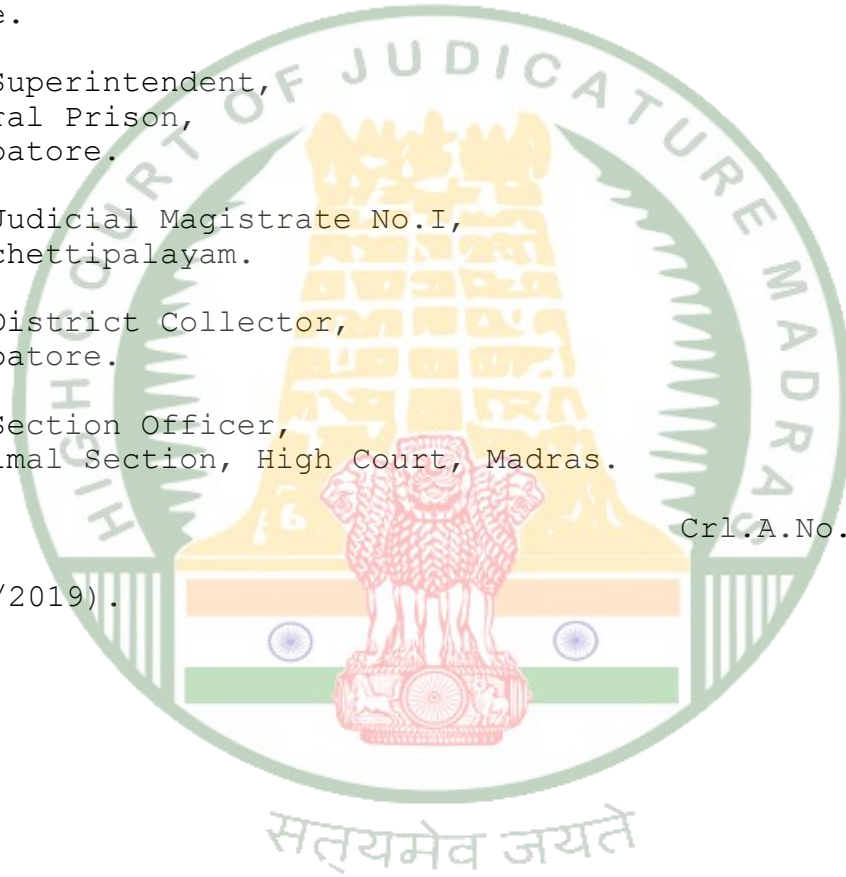
vs

To

- 1) The Principal Sessions Judge, Erode.
- 2) The Inspector of Police,
Bangalapudur Police Station,
Erode District.
- 3) The Public Prosecutor,
High Court, Chennai.
- 4) The Chief Judicial Magistrate,
Erode.
- 5) The Superintendent,
Central Prison,
Coimbatore.
- 6) The Judicial Magistrate No.I,
Gobichettipalayam.
- 7) The District Collector,
Coimbatore.
- 8) The Section Officer,
Criminal Section, High Court, Madras.

Cr1.A.No.686 of 2008

KAN(CO)
SSM(20/03/2019).



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