

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.804 of 2012

Selvam @ Kannan
S/O. Padavettan

... Appellant

Vs

1. The State rep. by
The Inspector of Police,
Jolarpet Police Station,
Vellore District.
Crime No.614 of 2008.
 2. Dharmalingam,
S/o.Thorali
 3. Navaneetham
W/o. Dharmalingam
- ... Respondents

Prayer: Criminal Appeal filed under Section 372(2) of Cr.P.C., against judgment dated 30.09.2011 made in Spl.S.C.No.7 of 2009 on the file of the learned Principal and Session Judge, Vellore.

For Appellant : Mr.S.Suresh

For Respondents

R1 : Ms.T.P.Savitha

Government Advocate (Crl.Side)

R2 & R3 : Mr.V.Paarthiban

J U D G M E N T

Being aggrieved over the judgement dated 30.09.2011 in Spl.S.C.No.7 of 2009 on the file of the learned District and Sessions Judge, Vellore, P.W.1, who is the victim in the above said case filed this appeal praying to set aside the judgment of acquittal and for convicting the accused/respondents 1&2.

2. The case of the prosecution is as follows :-
The respondents 2 & 3 in this appeal are arrayed as A1 and A2 in Spl.S.C.No.7 of 2009, they are having land in S.F.No.11/4-B in Thengaithoppu Vattam, Kottari Village. They cultivated sugar cane in their land and Ex.P.9 to Ex.P.11 are the copies of patta and chitta. As per the

evidence of P.W.8, the Village Administrative Officer, during the time of occurrence, the accused 1 & 2 are in the possession of the above said land. Adjacent to the land on the eastern side, a path way is running from north to south. On the date of occurrence, the accused put live electric fencing by using M.O.1 Aluminium wire and connected the same with PVC wire M.O.2, and the said wire connected with the the electric service connection owned by the accused. At that time of occurrence, when the deceased who is the wife of P.W.1, contacted with the electric live wire and got electrocution. P.W.1 who followed the deceased saw his wife falling on the ground and tried to pick up her and due to which, he also got electric shock. Thereafter, by using stick he removed the electric wire and then took his wife. P.W.2, the son of P.W.1, also came to the occurrence place and helped his father. Further on hearing the noise, P.W.3 Manjula, went to the place and saw the occurrence. Immediately on the day itself, P.W.1 lodged a complaint before P.W.10, Hemavathi, Sub Inspector of Police under Ex.P.1. On receipt of the complaint, P.W.10 registered a case in Crime No.614 of 2008 under Section 304 of IPC. The First Information Report marked as Ex.P.12.

3. After registering the case, P.W.10 took up the case for investigation. She visited the scene of occurrence and in the presence of P.W.4, she prepared observation mahazar under Ex.P.2. Further she drawn a rough sketch under Ex.P.13. She has recovered M.O.1 and M.O.2 aluminium wire and PVC wire in the presence of the same witnesses under the cover of mahazar, Ex.P.3. Thereafter, she held inquest over the dead body of the deceased Gowrammal in the presence of witnesses and prepared inquest report under Ex.P.14. After preparation of the inquest report, she sent the dead body to the Government Hospital for post-mortem with a requisition under Ex.P.5. After receiving the requisition from P.W.10, P.W.9, Mani, the then Head Constable, Jalarpet Police Station handed over the dead body for autopsy along with the requisition letter. In turn, P.W.6, Dr. Meenakshi attached with the Thirupattur Government Hospital, started the process of post-mortem, and found the following injuries :-

"Rigor mortis present

Skull - Normal Brain to neck - Normal

Face - Normal Hyoid bone - Normal.

Chest opened - Heart to Lungs Normal.

Abdomen opened - Stomach to Large intestines, Small intestine, Liver, Kidney's - Normal spleen.

Ovaries - Normal Bladder - Normal.

Findings - Right leg, electric shock wound entry seen at front with exit

seen at the back of leg.

Cause of death :- Electric shock leading to atrial fibrillation leading to death.

Time of death :- 4 to 6 hours prior to postmortem."

After the completion of post-mortem, she issued post-mortem certificate under Ex.P.6.

4. In the mean time, P.W.9, P.Srinivasan, Assistant Engineer of TNEB visited the scene of occurrence and gave a letter to the respondent Police under Ex.P.8. According to him, the service connection, in which the offence had happened, stands in the name of the first accused. Ex.P.7 is the copy of the Service Connection Register.

5. In continuation of investigation, P.W.10, the Sub Inspector of Police examined the witnesses and recorded their statements. She made an arrangement for taking photographs. According to the instructions given by P.W.10, P.W.5 took photographs under M.O.3 series in five different angles. After completing the above formalities, P.W.10 handed over the case records to P.W.11, Balakrishnan, Inspector of Police for further investigation. After receiving the case records, he took up the case for further investigation and examined witnesses. After completing the investigation, he laid charge sheet against the accused.

6. The trial Court framed charges under Section 304(ii) of IPC and under Section 135(1) (a) of the Electricity Act, 2003 against the accused. The accused denied the charges and pleaded not guilty and claimed for trial. In order to prove their case, on the side of the prosecution eleven witnesses were examined as P.W.1 to P.W.11 and fourteen documents were marked as Ex.P.1 to Ex.P.14 besides three material objects were produced as M.O.1 to M.O.3.

7. Out of the said witnesses, P.W.1, Selvam @ Kannan, who is the husband of the deceased, Gowrammal, has stated in his evidence that the accused in this case are the neighbours to him. They are residing in the western side of his house. Further he has stated that they having a habit to put electric fence near to the north-south pathway. According to him, on the date of occurrence, at about 5.30 a.m., the deceased was walking from north to south for attending natural call. P.W.1 had followed his wife and after seeing the falling down of the deceased, he attempted to take the deceased. Due to electrocution, he

left his wife and after removing the aluminium electric wire, along with other witnesses, he saw his wife but she died on the spot itself. Further he has stated about the lodging of complaint before the police officer.

8. P.W.2, who is the son of the deceased Gowrammal, has stated that on 11.06.2008 at about 10.00 p.m., the respondents 2 & 3, by using the aluminium wire put up the electric fence. On the next day morning, when he was followed his parents, his mother electrocuted and as a result of which she was died on the spot itself. Further, he stated after seeing the occurrence, the accused took the aluminium wire and ran away from the scene of occurrence. P.W.3, who is the neighbour of P.Ws.1 and 2, has stated that the accused put up the electric fence near to the pathway. Further, he stated that on the date of occurrence, after touching the electric fence, the deceased fell down and died on the spot itself due to electrocution.

9. P.W.4 is the witness for the preparation of observation mahazar. P.W.5 who is the photographer, has stated in his evidence that as per the request made by the Inspector of Police, he took the photographs of the dead body in five angles. P.W.6 Dr. Meenakshi, attached with the Tirupattur Government Hospital has stated about the process of post-mortem. Further she gave opinion in respect of the cause of the death. P.W.7 who is working as Assistant Engineer, Tamil Nadu Electricity Board, Singarapettai Division, has stated in his evidence that on the enquiry conducted, it was found that the occurrence was happened from the service connection No. 53 stands in the name of the accused Dharmalingam. P.W.8 is the Village Administrative Officer has stated that the electric fence was fixed in a land which belongs to the accused. P.Ws. 9 and 10 are the Police Officers have stated about the registration of the case, details of the investigation and filing of the final report.

10. When the above incriminating materials were put up to the accused under Section 313 of Cr.P.C., he denied the same as false. On the side of the defence, the accused were examined three witnesses as D.W.1 to D.W.3 and marked seven documents as Ex.D.1 to Ex.D.7. On considering all the facts and circumstances of the case, the trial Court came to the conclusion that the prosecution have not proved the guilt of the accused and acquitted the accused. Challenging the said order, the victim/P.W.1 in the above said case approached this Court by way of this appeal.

11. Today when the appeal is taken up for hearing, heard the arguments of Mr.S.Suresh the learned counsel appearing for the appellant and Ms.T.P.Savitha,

learned Government Advocate (Crl.Side) appearing for the first respondent/State and Mr. V.Paarthiban, learned counsel appearing for the second and third respondents and perused the materials placed before this Court.

12. Since the appeal is directed as against the judgment of acquittal, it is necessary to borne in mind about the observations made by our Hon'ble Apex court in the judgment reported in "(2018) 2 MLJ Crl. 357 - Bannareddy and others Vs. State of Karnataka and others", in which our Hon'ble Supreme Court held as follows :-

"27. Keeping in view the facts and circumstances of the case, we hold that the prosecution was not able to establish the guilt of the accused persons beyond reasonable doubt. Further, the High Court should not have re-appreciated evidences in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial court, especially when the prosecution case suffers from several contradictions and infirmities."

13. Now come to the case in hand, the learned counsel appearing for the appellant would submit that in the judgment rendered by the trial Court, acquitting the accused based on the two grounds.

- i) No one was examined as independent witness
- ii) Violation in non submission of separate report under Section 161 of Electricity Act.

14. With regard to the first point raised by learned counsel for the appellant, it is true that in order to prove the occurrence, on the side of the prosecution, the husband of the deceased was examined as P.W.1 and the son of the deceased was examined as P.W.2. Apart from that no witnesses were examined to prove the guilt of the accused. In this aspect on going through the circumstances in and around the case, it is admitted fact that the alleged occurrence was happened at about 5.30 hours in the early morning. More over the alleged occurrence had happened near to the sugar cane field. In the said circumstances, we cannot expect the direct evidence to accept the case of the prosecution. This Court affirm the first submission made by the learned counsel appearing for the appellant and hold that non examination of independent witnesses is not a fatal to the prosecution in this case.

15. With regard to the second point raised by the learned counsel appearing for the appellant, it is necessary to see the Section 161 of Electricity Act, 2003, which reads as follows :-

"Section 161.(Notice of accidents and injuries): -- (1) If any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct.

Now on going through the evidence of P.W.7, who was working as Assistant Engineer, Tamil Nadu Electricity Board, Singarapet, deposed that after hearing the news from his subordinates, he verified with the records and found that the service connection, from which the electric fence was connected, is belongs to the second respondent/first accused. Further he deposed that in this regard, he issued notice to the Police department under Ex.P.8. So according to him, except the preparation of the report, he did not do any work, as per the Section 161 of Indian Electricity Act. Further on going the entire reading of the said Section, it shows that the said direction is not mandatory and only directory in nature. Accordingly the second point raised by the learned counsel for the appellant is also reasonable one.

16. Per contra, during the course of arguments, the learned counsel appearing for the second and third respondents would submit that the appellant did not approach this Court with clean hands. Further he added that before the trial Court in respect of the accident, they took different stand with regard to the manner of accident happened. Further he would submit that the important documents i.e., the First Information Report and the Inquest Report did not reach the Court immediately after preparation by the Police Officers and it would cause grave prejudice to the accused and also creates doubt whether the occurrence had happened as stated by the prosecution or not.

17. In this regard, it is true that the complaint was lodged by P.W.1 and the First Information Report was registered on 12.06.2008, but the said document was received by the Magistrate only on 18.06.2008 at about 11 a.m. With regard to the distance between the Court and Police Station, it is hardly about 5 K.M. Further as per the evidence given by P.W.1, inquest over the dead body was conducted on the same day, on which the alleged occurrence was happened i.e. 12.06.2008. But without any reason, the inquest report was sent to the Court only on 24.03.2009. The inquest report is a crucial document, which shows the cause for death. In the said circumstances, with regard to the delay in sending the documents, the witnesses examined on the side of the prosecution have not given evidence in satisfactory manner.

18. More over, during the course of the trial, on the side of the accused, copies of the advocate notices dated 12.05.2010 and 28.02.2011 sent by the appellant claiming compensation from the accused and the Tamil Nadu Electricity Board, in which, he claimed compensation of Rs.10,00,000/- for the negligence committed by the Tamil Nadu Electricity Board and the copies of the said notices are marked as Ex.D.1 and Ex.D.2. Now on going through the averments made in the complaint Ex.P.1, P.W.1 had clearly stated that the respondents 2 and 3/ accused formed the electric fence in their field. But in Exs.D.1 & 2, P.W.1 has stated that due to the running of the electric wire from the electric post, the deceased Gowrammal got electrocution and died. So on comparing the averments made in the complaint with the averments of Exs.D.1 & 2, the appellant had taken two stands with regard to the alleged occurrence.

19. More over, he gave evidence before the trial Court only on 22.08.2011, in which he deposed that only due to the electric fence, his wife met with an accident. But prior to the said date i.e, on 28.02.2011, in the notice sent by him, he took a different stand as the electric wire got stuck from the electric post. So the said contradiction creates doubt whether, the alleged accident was happened as stated by the prosecution or not. The evidence of P.W.1 and P.W.2 itself create doubt with regard to the manner of the accident happened. So the submission made by the learned counsel for the respondents 2&3/accused is thoroughly reasonable and convinced this Court.

20. In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the

presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. In the above said circumstances, I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence the appeal fails and the same is deserves to be dismissed.

21. In the result, the Criminal Appeal fails and accordingly, the same is dismissed and the impugned order of acquittal passed by the Court below is hereby confirmed.

Sd/-

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal and Session Judge,
Vellore
2. The Inspector of Police,
Jolarpet Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras

+lcc to Mr.V.Paarthiban , Advocate SR.No. 43318

+lcc to Mr. M.B.G.Vinoth kumar, Advocate SR.No. 42954

CRL.A.804 of 2012

vd(co)

ASK(24/09/2018)