

Bail Slip

That the Appellant/Accused namely Manisekaran, S/o Vaithyalinga Udayar was released on bail as per order of this Court dated 01.02.2010 in M.P.No.1/10 in CrI.A No.75/10.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.A.No.75 of 2010

Manisekaran Appellant

Vs.

The State by
Inspector of Police
Sankarapuram Police Station
Villupuram District
Crime No.6 of 2007 Respondent

PRAYER: Appeal filed under Section 378 Cr.P.C. against the Judgment dated 31.12.2009 passed in S.C.No.107/08 on the file of the Additional District Sessions Judge, (Fast Track Court), Kallakurichi.

For appellant : Mr.R.Nalliyappan

For Respondent: Mr.R.Ravichandran
Government Advocate (CrI. Side)

J U D G M E N T

The Criminal Appeal is filed by the appellant as against the Judgment dated 31.12.2009 passed in S.C.No.107/08 on the file of the Additional District Sessions Judge, (Fast Track Court), Kallakurichi.

2.The prosecution case is as follows:-

The appellant had put up a electric fence in his agricultural land to safeguard the agricultural crops from rodents. But, due to the electric fence, on 07.01.2007, the deceased died by electrocution. In respect of the same, the

Village Menial - P.W.2, informed about the offence alleged to have committed by the appellant to the Village Administrative Officer - P.W.1. Therefore, on 07.01.2007, a complaint (Ex.P.1) was lodged before the respondent police.

3.P.W.9 - a Head Constable received the complaint from P.W.1 and registered a case in Crime No.6 of 2007 for offence under Section 304(ii) IPC. Ex.P.11 is the First Information Report. After receipt of the F.I.R., the Investigating Officer - P.W.10, took up the case for investigation and went to the scene of occurrence. Further, he prepared an Observation Mahazar-Ex.P.5, Rough Sketch-Ex.P.12 and recovered M.O.1-Electric fencing wire with 30 sticks. P.W.10 also conducted inquest over the dead body of the deceased, in the presence of the independent witnesses and issued inquest report-Ex.P.13.

4. Thereafter, on 08.01.2007, the Investigating Officer arrested the accused, Manisekaran, in the presence of P.W's.1 and 2 and the accused voluntarily gave confession statement. After examining the Medical Officer and other witnesses, he handed over the case file to P.W.11-Inspector of Police since, P.W.10, the Investigating Officer was transferred. P.W.11, took up the case for further investigation and laid final report on 03.12.2007 for offence under Section 304(ii) IPC and the same was taken on file by the learned Additional District Sessions Judge (Fast Track Court), Kallakurichi, in S.C.No.107 of 2008.

5. In order to prove the case of the prosecution, on the side of the prosecution, P.Ws.1 to 11 were examined; documents Exs.P.1 to 13 were marked beside 1 material object.

6. When the trial Court examined the accused under Section 313 Cr.P.C, in respect of the incriminating evidences available against him, he denied his complicity in the crime and pleaded innocence. However, he neither choose to examine any witness nor to mark any document.

7. The trial Court, after considering the oral and documentary evidences, has found the accused guilty and convicted for the offence under Section 304(ii) I.P.C., and sentenced him to undergo two years Rigorous Imprisonment with fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment.

8. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

9. Heard the learned counsel appearing for the appellant as well as the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

10. The learned counsel for the appellant would submit that the alleged crime is neither willful nor wanton. The learned counsel would further submit that though the alleged occurrence happened on 07.01.2007, the respondent police investigated the matter and arrested the accused only on 08.01.2007 at about 17.00 hours. The FIR was registered with a delay of 4 hours and the same was forwarded to the learned Judicial Magistrate concerned with a further delay of 1 ½ days, which makes suspicious over the prosecution case. Initially, P.W.5, made a complaint before the respondent police, but, the same was suppressed by the police, and it has been mentioned that as if P.W.1 only made complaint. The glaring discrepancies were not appreciated by the learned Additional District Sessions Judge.

11. Apart from the above, the prosecution alleged that the appellant have taken electricity from his electric connection which is located 80 metres away from the scene of occurrence. Hence, there must be a connecting wire to a length of 80 metres to connect the open electric wire and the electricity junction and the prosecution has not recovered the same to establish their case that the appellant has passed the electricity to the electric fence situated at scene of occurrence and due to the same, the deceased had fell down and died. Hence, according to the learned counsel for the appellant, there is no material evidence to show that the appellant herein has caused the death of the deceased. Hence, he prayed for acquittal of the appellant.

12. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that delay in registering FIR and sending the copy of the report to learned Judicial Magistrate concerned does not render whole of the prosecution case doubtful. Further, P.W.2 informed P.W.1 - the Village Administrative Officer, that the death message of the deceased was not passed to the relatives of the deceased. Hence, the delay in registering FIR and sending the same to learned Judicial Magistrate concerned will not affect the prosecution case.

13. Further, the learned Government Advocate (crl.side) would submit that the accused allegedly put up an electric fence in his agricultural land knowingly, that it will cause danger to the general public. Therefore, the overt act of the accused is very well attracts Section 304(ii) IPC. Further, P.W.8 -

Wireman clearly deposed that the electricity connection was taken from the junction without getting proper permission from the Electricity Board. Therefore, the accused/appellant has been rightly convicted by the trial Court under Section 304(ii) IPC in S.C.No.107 of 2008 on 31.12.2009.

14.From the materials available on record, it is seen that on 07.01.2007, P.W.1 - the Village Administrative Officer made a complaint before the respondent police, alleging that at about 9 a.m., he received information from the Village Menial - P.W.2, as if one unknown person died in the agricultural land belongs to the appellant. Immediately, P.W.1, rushed to the scene of occurrence and enquired about the identity of the deceased and he came to know that the deceased belongs to Vellarikkadu village and his name is Thoppuli. Thereafter, the same was informed to the Law Enforcing Agency for further course of action. After completion of investigation, the final report was filed before the learned Additional District Sessions Judge, (Fast Track Court), Kallakurichi, and the same was taken on the file in S.C.No.107 of 2008.

15.P.W's.1 and 2 have clearly deposed the manner in which they came to know about the death of the deceased and they were stood as witnesses for Seizer Mahazar (Ex.P.3), Observation Mahazar (Ex.P.5) and confession statement (Ex.P.7). Further, the evidence of P.W's.1 to 8 have clearly corroborates each other and it has been clearly established by the prosecution that the death of the deceased was occurred only due to electrocution in the land belongs to the appellant.

16.P.W.6 - Thangarasu, who accompanied the deceased at the time of death has clearly deposed the manner in which the deceased died. After elaborate consideration of the evidences of prosecution witnesses, the trial Court has rightly come to the conclusion that the appellant has committed offence as alleged by the prosecution under Section 304(ii) I.P.C., and convicted him accordingly. Hence, this Court finds no error in the order of the trial Court in S.C.No.107 of 2008 dated 31.12.2009.

17.At this juncture, the learned counsel for the appellant would submit that the appellant is aged about 52 years and he is suffering with old age ailments. However, he is ready to pay compensation to the victim family. In support of his contention, the learned counsel filed an affidavit dated 28.01.2019 before this Court and further, the appellant agreed to pay Rs.5,00,000/- (Rupees five lakhs only) as compensation to the victim family within a period of two weeks.

18.The appellant is present before this Court today and agreed to pay a compensation of Rs.5,00,000/- to the deceased

family and he has also filed an affidavit to that effect. P.W.7, Mallika, who is the wife of the deceased, is also present before this Court and agreed to receive the compensation amount and requests this Court that the said amount may be deposited in her name and also the names of her two sons. Therefore, considering the aggravating as well as mitigating circumstances of the case, this Court is inclined to take a lenient view to reduce the sentence imposed on the accused. Even, sending the accused to suffer the remaining period of incarceration will not be benefited to the deceased family.

19. In the result, the Criminal Appeal is partly allowed and the conviction imposed by the learned Additional District Sessions Judge, (Fast Track Court), Kallakurichi, in S.C.No.107/08, dated 31.12.2009, is confirmed and the sentence alone is modified to 15 days simple imprisonment. The period of incarceration already undergone by the appellant shall be given set off. As agreed by the appellant, he is directed to deposit Rs.2,00,000/- (Rupees two lakhs only) each to the sons of the deceased and Rs.1,00,000/- (Rupees one lakh only) to the wife of the deceased in any one of the Nationalized Banks by way of Fixed Deposit. For the welfare of the sons of the deceased, P.W.6, the wife of the deceased is entitled to withdraw the interest accrued on the share of her and also on the share amounts of her sons once in three months, till both the sons are attaining majority. Compliance report with bank details should be produced before the Additional District Sessions Judge, (Fast Track Court), Kallakurichi, within a period of two weeks from the date of receipt of a copy of this judgment. In case, the accused/appellant fails to deposit the said compensation amount as agreed before this Court, this Criminal Appeal stands automatically dismissed and the Judgment passed by the learned Additional District Sessions Judge, (Fast Track Court), Kallakurichi, dated 31.12.2009 in S.C.No.107/08 shall stand confirmed. The Trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence, if he fails to deposit the said amount as agreed by him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Sankarapuram.

2.Do thro the Chief Judicial Magistrate,
Villupuram.

3.The Additional District Sessions Judge, (Fast Track Court),
Kallakurichi.

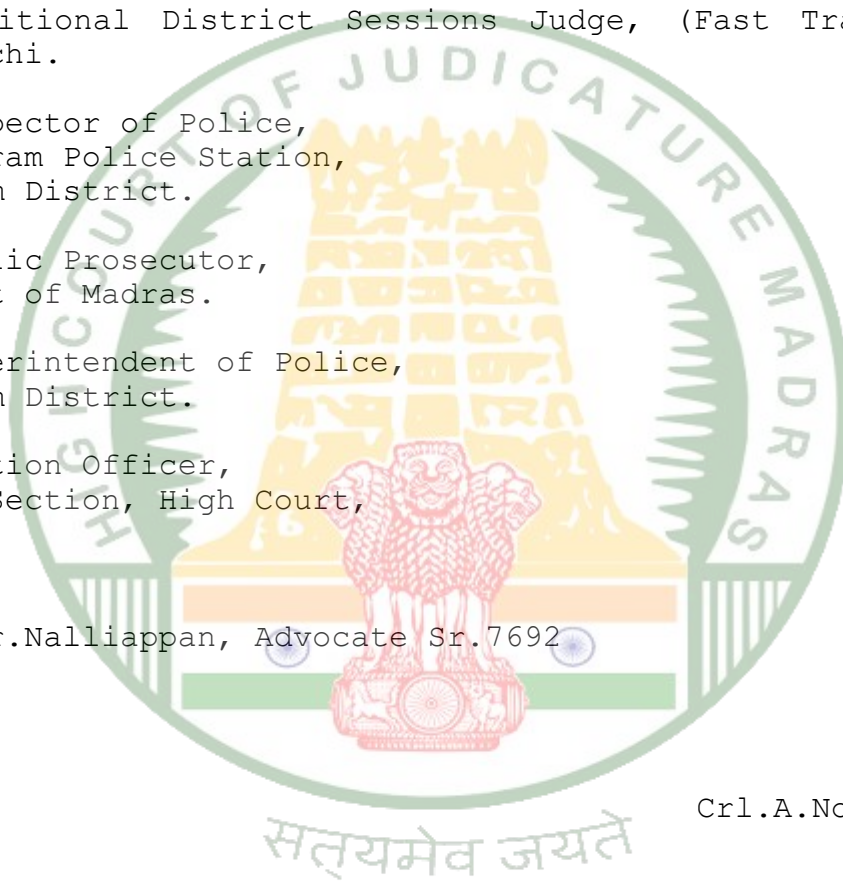
4.The Inspector of Police,
Sankarapuram Police Station,
Villupuram District.

5.The Public Prosecutor,
High Court of Madras.

6.The Superintendent of Police,
Villupuram District.

7.The Section Officer,
Criminal Section, High Court,
Madras.

+lcc to Mr.Nalliappan, Advocate Sr.7692



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