

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.92 of 2019
and
Crl. MP. No.2272 of 2019

Jokkar @ Subbarayan

.... Appellant/Sole Accused

-Vs-

The State rep. by
Inspector of Police,
Vettavalam Police Station,
Vettavalam, Tiruvannamalai District.

.... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment of conviction and sentence dated 21.12.2018 passed in S.C.No.159 of 2009 on the file of the Principal District and Sessions Court, Tiruvannamalai.

For Appellant : Mr.Jawahar B.

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

J U D G M E N T

This appeal arises against the judgment of conviction and sentence dated 21.12.2018 passed in S.C.No.159 of 2009 on the file of the Principal Sessions Court, Tiruvannamalai, convicting appellant/accused for offences under sections 135 and 138 of Tamil Nadu Electricity Act and 304(a) IPC [2 counts] & 429 IPC [2 counts] and sentencing him to undergo one year Rigorous Imprisonment for offence under Section 135 of Tamil Nadu Electricity Act and One year Rigorous Imprisonment and fine of Rs.500/- in default 3 months Simple Imprisonment for offence under Section 138 of Tamil Nadu Electricity Act and 7 years Rigorous Imprisonment and fine of Rs.5,00/- in default one year Simple Imprisonment each for offence under Section 304(A) IPC [2 counts] and one year Rigorous Imprisonment and fine of Rs.5,00/- in default 3 months Simple Imprisonment each for offence under

Section 429 IPC [2 Counts]. Trial Court directed the sentences to run concurrently.

2. The case of the prosecution is that while the accused cultivating the land he had put up electric fencing using the electricity line passed over his land in order to safeguard his Manila crops from Hog. On 27.09.2008, the accused went to the defacto complainant's house and picked up the husband and son of the defacto complainant for transporting paddy through bullock cart. While they were working in the land of the accused, the electricity passed on them, which caused the death of the persons. After receiving the information, the defacto complainant preferred a complaint before the respondent police and the same was registered by the respondent police in Crime No.318 of 2008 for the offences under Sections 135, 138 of Tamil Nadu Electricity Act, 304(A) IPC (2 counts) and 429 IPC [2 counts]. Upon completion of investigation, the respondent police filed a charge sheet before learned Judicial Magistrate, Tiruvannamalai, for the commission of offences under Sections 135, 138 of Tamil Nadu Electricity Act, 304(A) IPC (2 counts). On Committal, the case was tried in S.C.No.159 of 2009 on the file of learned Principal District & Sessions Judge, Tiruvannamalai.

3. Before the trial Court, prosecution examined PWs.1 to 11 and marked Exs.P1 to P18. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., accused denied charges. Trial Judge, on appreciation of the oral and documentary evidence, under judgement dated 21.12.2018, convicted the appellant/ accused for offences under Sections 135, 138 of Tamil Nadu Electricity Act, 304(A) IPC (2 counts) and sentenced him as stated above. As against the said order, the present appeal has been preferred before this Court.

4. The learned counsel for the appellant would submit that there is no evidence to show that the appellant was the person, who cultivated the land and put up electric fence over his land, which caused the death of the deceased. PW-8, the Village Administrative Officer has not stated that the appellant is the person, who cultivated the land and also the appellant/accused was in possession of the land at the relevant point of time. None of the witnesses have spoken about the possession of the land. No witnesses has stated that the appellant/accused had taken the electricity and also put up the electric fence and caused the death of the deceased. Therefore, the trial Court failed to consider that the prosecution has failed to prove its case beyond the reasonable doubts, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PW-8, the Village Administrative Officer clearly stated that the appellant/accused

was the one who cultivated the land at the time of the occurrence and he theft the electricity and put up wire fence over his land in order to protect his crops. Therefore, the prosecution has proved its case beyond reasonable doubts. The learned Sessions Judge also convinced the case of the prosecution and found that the prosecution proved its case beyond reasonable doubt and hence, there is no reason to interfere in the judgment of conviction passed by the trial Court.

6. Heard the learned counsel on either side and perused the records.

7. The case of the prosecution is that while the defacto complainant's husband and son were working in the land possessed by the accused, the electricity passed on them through the wire fence, which was put up by the accused, due to which, they died. PW-1 who is the wife of the deceased Murugan, has clearly stated that the accused had taken her husband and son to his land for transporting the paddy through the bullock cart. On 09.08.2006 at about 4.00 p.m they went to his land and came back to home and again at about 7.00 p.m the accused taken her husband and son to his land. It shows that the accused was the person, who had taken the defacto complainant's husband and son to his land for transporting paddy through bullock cart. Subsequently, from the evidence of PW-1 it is seen that her husband and son did not return to her house and she heard the news that both of them found dead in the land, which was in possession of the accused. When the PW-8, Village Administrative Officer has clearly stated that the accused was cultivating the land, in which, the bodies of the deceased were found. Even the other witnesses have also spoken that the accused had cultivated Manila crops at the time of the occurrence. In the said land, the Hogs used to come and destroy the crops and in order to protect his crops, he had taken the electricity through iron hook and passed through the wire fence. The electricity engineers also have spoken about the incident. Though there is no eye witness, it can be inferred by the circumstantial evidence. From the evidence of PW-1, it is seen that the accused took her husband and son to his place and returned back to home, subsequently they once again went there, but, did not return to her house. The body of the husband and son of the defacto complainant were found in the land of the accused. Therefore, it is for the appellant to explain the same. When he took the deceased from the house of the defacto complainant-PW-1, it is for him to deny such defence that he has not taken the two persons to transport the paddies belong to the appellant. Therefore, under the circumstances, even though there was no eye witnesses, the land, in which the bodies of the deceased were found, was in possession of the appellant at the time of the occurrence. The post-mortem reports

in Exs.P10 & P11 also clearly indicates that they died due to electric shock.

7. In the circumstances, this Court finds that the prosecution has proved its case beyond reasonable doubts. There is no merit and sound ground and reason to take a different view and also to interfere with the judgment passed by the learned trial Judge and hence, this Criminal Appeal is liable to be dismissed.

8. Accordingly, this Criminal Appeal shall stand dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Judge,
Tiruvannamalai.
- 2.The Inspector of Police,
Vettavalam Police Station,
Vettavalam, Tiruvannamalai District.
- 3.The Public Prosecutor,
High Court, Madras -104.

+1cc to Mr.B.Jawahar, Advocate SR.No.19290

Criminal Appeal No.92 of 2019

PA (CO)
GMY (03/04/2019)

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