

BAIL SLIP

The Appellant herein/ Accused namely Kanniyappan, S/o.Munusamy, (in C.C.No.2 of 2011 on the file of Special Court, Principal Sessions Judge, Puducherry) was directed to be released on bail as per order of this Court dated 30.10.2014 and made in MP.No.1 of 2014 in Criminal Appeal No.545 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.545 of 2014

Kanniyappan

..Appellant /Accused

/versus/

The State Rep.by
The Station House Officer,
Thvalakuppam Police Station,
Puducherry.

..Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C to set aside the conviction order of the learned Principal Sessions Judge(Special Court) at Puducherry in C.C.No.2 of 2011 dated 08.10.2014 by allowing the appeal.

For Appellant :Mr.P.Veeraraghavan

For Respondent :Mr.V.Balamurugan,APP(P)

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J U D G M E N T

The appellant herein was tried for the offence under Sections 304(A), 379 of IPC and Section 40 of the Indian Electricity Act. Initially, the case was tried by the Judicial Magistrate at Puducherry, later after repeal of Electricity Act, 1910 and introduction of new Electricity Act, 2003, the offence is triable by Sessions Judge. So, the case was transferred to

the Special Judge (Under the Electricity Act 2003) at Puducherry. The trial has continued before the Special Judge. After examining 15 witnesses and appreciating 12 exhibits and 8 material objects filed in support of the prosecution, the trial Court has held the accused guilty of offence under Sections 304 (A), 379 of IPC and Section 40 of the Indian Electricity Act, 1910 sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default to undergo 3 months Simple Imprisonment for the offence under Section 304(A) of IPC and sentenced him to undergo one (1) year Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 379 IPC r/w 39 of the Indian Electricity Act, 1910. As far as the charge under Section 40 of the Indian Electricity Act, 1910, the trial Court has acquitted the accused. The substantial sentences of imprisonments were ordered to run concurrently. The period of detention already undergone, if any, was directed to be set off under Section 428 of Cr.P.C.

2. Aggrieved by the judgment of conviction and sentence passed by the trial Court, the present appeal is preferred by the accused on the ground that the allegation of the prosecution that on 18.04.2005 at about 03.45 p.m., one Dhandapani died in his house out of electrocution due to negligence of the appellant-house owner for not providing safety device and drawing electricity directly from the low tension line by hooking the death has occurred, hence the appellant is liable. However, the prosecution has neither proved the illegal drawing of electricity or the culpability of the accused, who was admittedly not present during the occurrence.

3. The learned counsel appearing for the appellant would further submit that out of 15 witnesses examined by the prosecution, 8 witnesses have turned hostile. The evidence of PW-12[Thiru.Ganesan, Junior Engineer attached to Electricity Board] bristles with contradictions and falsehood. Admittedly, he had visited the scene of occurrence on 18.04.2005 at about 03.45 p.m., immediately on receipt of the information from Thavalakuppam Police Station. He has prepared his report[Ex.P6] which is dated 19.04.2005. In his report, he has not mentioned anything about the presence of electric fitting and wiring. He has only illustrated about his inference how the accident has occurred. Apart from the evidence of PW-12, yet another witness for prosecution PW-13[Thiru.Narasimhan], Head Constable of Thavalakuppam Police Station has spoken about his visit to the scene of occurrence, preparation of sketch and recovery of material objects in the presence of the witnesses. Since the independent witnesses for the recovery have turned hostile, the evidence of PW-13 is highly doubtful.

4. Further, the learned counsel appearing for the appellant would submit that the prosecution under Section 40 of the Electricity Act, 1910 itself is illegal since on the date of occurrence the said Act was repealed and substituted by new Electricity Act, 2003. Under the new Act, there is a procedure contemplated to take cognizance. In this case, such procedure has not been followed.

5. The learned Additional Public Prosecutor (Pondy) would submit that the death of Dhandapani in the residence of the accused/ appellant is not denied and it is an admitted fact that the cause of death was due to electrocution. He also submitted that under Section 135(1) of the Electricity Act, 2003 there is a presumption clause which reads as under:-

"Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case maybe, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer."

6. Relying upon the evidence of PW-12, PW-13 and PW-15, the learned Additional Public Prosecutor would submit that though the defacto complainant and others have turned hostile, for the best reason known the telltale evidence collected from the scene of occurrence by the investigating officer, photos (2 nos.) one negative print[M.O.1] proves that by artificial means not authorised by the Board the electricity was drawn illegally by the consumer Kanniappan (appellant) in which Dhandapani has succumbed due to electrocution.

7. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor (Pondy) appearing for the State and perused the records.

8. It is the case of unnatural death due to electrocution. The materials placed before the Court prima facie indicates that on 18.04.2005 at about 03.45 p.m in the attempt to draw electricity illegally by hooking to the low tension wire Dhandapani has been electrocuted. PW-1 [Sengeni] came to the station at about 18.30 hours and gave an oral complaint to PW-13 about the death of Dhandapani. Accordingly, PW-13 had reduced the oral complaint into writing and registered First Information Report. The complaint as reduced into writing by PW-13 is marked

as Ex.P7 and the First Information Report pursuant to the complaint is marked as Ex.P8. In the light of the said complaint and in the light of the deposition of PW-12[Thiru.Ganesan, Junior Engineer attached to Electricity Board], this Court finds that even before receipt of the complaint and registration of the First Information Report, PW-12[Ganesan] Junior Engineer has received information from the Police Station over phone and had visited the scene of occurrence. However, he has given the report [Ex.P6] only on the next day i.e 19.04.2005. In his report, he has stated that he has observed that the house owner (appellant) has taken power supply unauthorisedly without any protection device from the low tension wire to his newly constructed thatched house. On enquiry, it is understood that the victim got electricity shock while making the electric connection.

9. To substantiate the above observation of PW-12, the prosecution had not collected any evidence. First of all, to show the said premises is owned by Kanniappan (appellant), there is no document. Next there is no material to indicate that he had installed device unauthorisedly to take power from the electricity pole. The presumption clause under Section 135(1) of the Electricity Act, 2003 which is relied by the learned Additional Public Prosecutor(Pondy) is only if it is proved that any artificial means not authorised by the Board exists for the abstraction, it can be presumed that the said dishonored abstraction of electricity was caused by the consumer.

10. In this case, the prosecution has miserably failed to prove the artificial means of abstraction electricity since the witnesses to the occurrence and the defacto complainant as well as the witnesses to the recovery mahazar have turned hostile. Also, who was the consumer not proved. Merely based on the observation of PW-12 who claims that he has visited the place on 18.04.2005 even prior to the complaint and registration of First Information Report, the trial Court has convicted the appellant. The infirmity in the prosecution case enures the benefit of doubt to the appellant. Beyond that, when the new Act has come into force from 02.06.2003, the incident has occurred on 18.04.2005. Therefore, the prosecution under the repealed Act also not sustainable. The saving clause under the new Act will not apply to this case, since the occurrence itself is subsequent to the repeal of the old Act. Therefore, this Court finds that the judgment of the trial Court is liable to be set aside both on facts and on law.

11. Accordingly, this Criminal Appeal is allowed. The judgment of conviction passed by the learned special Judge under the Electricity Act, 2003 at Puducherry in C.C.No.2 of 2011 dated 08.10.2014 is set aside. The appellant is set at liberty.

Fine amount, if any paid by the appellant is ordered to be refunded to him. Bail bond, if any executed by the appellant shall stand cancelled.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge
(Special Court) at Puducherry.

2. The Station House Office,
Thvalakuppam Police Station,
Puducherry.

3.The Public Prosecutor
(Pondicherry), High Court,
Madras.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.P.Veeraraghavan, Advocate, SR.No.31902

Cr1.A.No.545 of 2014

Kak(05/08/2019)

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