

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.968 of 2020 and
Crl.M.P.No.6710 of 2020

Kandasamy,
S/o.Periyasamy Mooper

... Petitioner

Vs.

The Inspector of Police,
Keelkuppam Police Station,
Kallakurichi District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 31.08.2020 made in Crl.A.No.67 of 2019 on the file of the III Additional Sessions Judge, Villupuram @ Kallakurichi confirmed the conviction and modified in respect of compensation alone in S.C.No.177 of 2017 order dated on 08.08.2019 on the file of the Assistant Session Judge, Kallakurichi, by allowing this Criminal Revision Petition.

For Petitioner : Mr.V.Gunasekar
For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

This Criminal Revision has been filed to set aside the judgment, dated 31.08.2020, made in Crl.A.No.67 of 2019 passed by the learned III Additional Sessions Judge, Villupuram @ Kallakurichi, confirming the judgment dated 08.08.2019 in S.C.No.177 of 2017 passed by the learned Assistant Sessions Judge, Kallakurichi.

2.Since the revision is on short compass, both the learned counsel for the petitioner and the learned Additional Public Prosecutor agreed to take up the revision for final hearing. Hence, the revision has been taken for final disposal.

3.The conviction and sentence of the Courts below are as follows:-

The petitioner was convicted for offence under Section 304

(2) IPC and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment. The petitioner to pay a compensation of Rs.3,00,000/- to the parents of the deceased under Section 357 Cr.P.C. The lower appellate Court enhanced the compensation of Rs.3,00,000/- to Rs.5,00,000/- and confirmed the conviction and sentence passed by the trial Court in S.C.No.177 of 2017.

4.The gist of the case is that PW1, the senior father of the deceased Harish lodged a complaint [Ex.P1] on 12.10.2016 at about 04.00 p.m., to PW13/the Special Sub Inspector stating that PW2, the mother of the deceased and sister-in-law of PW1 and PW3 went to PW1's field to sow cotton along with the deceased Harish. After finishing the work, PW2 and PW3 were returning along with the deceased, at that time, the deceased informed his mother/PW2 that he wanted to attend his natural calls, thereby he went near the petitioner's land measuring about 12 acres, out of which Tapioca was planted in half of the land and the rest of the land kept as barren land. When the deceased went near the petitioner's land and stepped into the Tapioca plant, he got electrocuted, as a result, he sustained injuries on his left leg and died.

5.PW13, on receipt of the complaint [Ex.P1], registered an FIR [Ex.P18], informed PW16/the Investigating Officer and went to the scene of occurrence. By the time PW5, the Village Administrative Officer, PW6, the Junior Engineer and PW7, Wireman of the Tamil Nadu Electricity Board had reached the scene of occurrence. They were informed about the incident. PW16/the Investigating Officer visited the scene of occurrence examined PW1, prepared Observation Mahazar [Ex.P6], Rough Sketch [Ex.P21], examined the witnesses present in the scene of occurrence. PW7, the Wireman disconnected the power line and in presence of PW6 and PW7, barbed wires [MO1 to MO2] were seized from the scene of occurrence. The body of the deceased handed over to PW12, the Constable. PW12 produced the body to the Postmortem Doctor/PW10, who conducted autopsy on 13.10.2016 between 10.45 p.m., and 11.45 p.m and issued Postmortem report [Ex.P15]. The viscera and the hyoid bone were taken and preserved and sent to forensic department for examination. PW11, the Scientific Officer examined the viscera and gave report [Ex.P17]. PW15, the Doctor examined the hyoid bone and gave his report [Exs.P20 & P27]. The petitioner was arrested on 14.06.2016 and gave confession [Ex.P23] in presence of PW8/VAO and PW9/Village Assistant. Pursuant to the confession MO3 & MO4 were seized. The seized Material Objects [MO1 to MO4] were sent to the Court through Form-95 [Ex.P26]. On completion of investigation, filed charge sheet before the trial Court.

6. During trial, the prosecution examined 16 witnesses and marked 28 documents and 4 material objects. On the side of the defence, no witness was examined and no document was marked. The trial Court on considering the evidence and materials had convicted the petitioner as stated above. The lower appellate court confirmed the sentence of the trial Court and enhanced the compensation from Rs.3,00,000/- to Rs.5,00,000/- and dismissed the appeal, against which the present revision.

7. The learned counsel for the petitioner submitted that PW1 is the senior father of the deceased, who was informed by PW2, the mother of the deceased that her son/deceased on 12.10.2016, at about 02.45 p.m., attended nature calls and went to take a wash in the field of petitioner, at that time, the deceased got trampled in the illegal electric fencing put up by the petitioner and he died on the spot. PW2 and PW3 attempted to rescue the deceased by using saree and informed PW1. PW1 along with PW4 had gone to the Police Station and lodged a complaint [Ex.P1] to PW13. The learned counsel further submitted that in this case, PW2 and PW3 stated that on hearing the cry of the deceased, they reached the scene of occurrence and saw the deceased lying down dead and electrocuted. PW2 and PW3 stated that they saw the burn smoke emanating from the left ankle of the deceased and the same is admitted by PW16/Investigating Officer. The medical evidence is not in conformity to the same. Further, with regard to topography, PW2 and PW3 have given contradictory version, since they were not present in the scene of occurrence.

8. The learned counsel for the petitioner further submitted that PW2 and PW3 admitted that there is a gate before the well and there is no necessity for the deceased to go near the fencing and further admitted that the field was under drip irrigation and MO1 and MO2 seized were used for holding the drip irrigation pipe and not used for fencing. PW1 to PW4 stated that the body of the deceased was lying in the field and after Police reaching the scene of occurrence and conducting inquest on the body of the deceased, the body was sent to hospital at about 07.30 p.m. On the contrary, PW5/VAO, PW6/Junior Engineer, PW7/Wireman stated that when they reached the scene of occurrence, the body of the deceased was not there and it was taken to hospital. In view of the same, the presence of PW1 to PW4 in the scene of occurrence is highly doubtful.

9. He further submitted that PW1 is the Village President and he through his clout, had falsely implicated the petitioner. PW5 gave the patta details of the land of the petitioner, from which, it is seen that the electricity connection did not stand in the name of the petitioner. PW6/Junior Engineer and PW7/Wireman, who removed MO1 and MO2 have clearly stated that

there is no power connection attached to MO1 to MO2. In view of the above contradiction in the evidence of the witnesses, the petitioner ought to have been acquitted by the Courts below. Further, the seized material objects [MO1 to MO4] and the confession [Ex.P23] of the petitioner is highly artificial. PW8/VAO and PW9/Village Assistant have categorically stated that the confession and seizure mahazar [Exs.P23 & P24] were prepared in the Police Station. PW8 and PW9 are not independent witnesses. Further, MO3 and MO4 are of no consequence.

10. In this case, the Inquest Report [Ex.P22] and the Observation Mahazar [Ex.P6] are said to have prepared in the scene of occurrence, but all these documents namely Exs.P6, P9 & P22 are all computer typed print out documents. PW13 and PW16 admitted that they have not taken any computer or battery operator printer to the scene of occurrence. Hence, these documents have not prepared in the manner as projected. In view of the same, the signatures of PW1 to PW4 found in Inquest Report [Exs.P2, P3, P4 & P5] are doubtful. Hence, the credentials of these witnesses are highly doubtful and the documents were not prepared at the time and in the projected manner. On the categorical evidence of PW6 and PW7, it is seen that there is no power connection to the wires MO1 & MO2. PW6 and PW7 stated that there is no power connection, this answer is only during cross examination and it cannot be considered. PW6 and PW7 have not treated as hostile. In such circumstances, there evidence cannot be taken in part. The topography of the land has not properly stated by the witnesses examined by the prosecution and the petitioner fenced his field with barbed wires and he has not electrified the fencing.

11. It is further submitted that the lower appellate Court concurred with the judgment of the trial Court and dismissed the appeal without giving any reason and enhanced the compensation from Rs.3 lakhs to Rs.5 lakhs is not proper. Further, the petitioner without prejudice to his right and on merits of the case, the petitioner paid a sum of Rs.5,00,000/- to PW2, the mother of the deceased Harish and produced the Demand Draft for the same, which was handed over in the presence of the Superintendent of Police, Kallakurichi on 23.12.2020. The petitioner handing over the amount is only on humanitarian consideration and it is not construed as admission of the guilt of the petitioner and no way affect his rights.

12. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that in this case, a ten year old boy Harish/deceased, the son of PW2 was electrocuted and lost his life. On 12.10.2016, PW2 and PW3 went to work in the field of PW1. While they returning back, the deceased went to nature calls and to clean himself, he had gone to the well in

the petitioner's field, at that time, he got tampered in the electric fencing and died on the spot. PW2 in a state of shock and not knowing what to do, contacted PW1/brother-in-law. PW1, the Panchayat President immediately came to the scene of occurrence along with PW4 and went to the Police Station and lodged a complaint [Ex.P1] to PW13. PW13 registered an FIR [Ex.P18] informed the same to his superior/PW16. PW5/VAO, on information went to the scene of occurrence. PW16, later reached the scene of occurrence, prepared Observation Mahazar [Ex.P9], Rough Sketch [Ex.P21], recorded the statements PW1 to PW4 and PW14, conducted inquest on the body of the deceased and the inquest report is Ex.P22. PW6/Junior Engineer was informed about the incident and he informed the same to PW7/Wiremen and to disconnect the power supply and to come to the scene of occurrence. PW6 and PW7 disconnected the barbed fencing wires [MO1 and MO2] in presence of witnesses and the same were seized through the Seizure Mahazar [Ex.P9]. Thereafter, the body was sent to the Post mortem. PW12, the body constable produced the body to PW10/Postmortem Doctor. PW10, the Post mortem conducted postmortem and gave his report [Ex.P15]. The viscera was collected and sent to Forensic Department for examination. PW11, the Scientific Officer gave forensic report [Ex.P17]. The hyoid bone was preserved and sent to PW15, the Forensic Medical Doctor and he gave his report [Exs.P20 & P27]. From the Postmortem report [Ex.P15] and Forensic Report [Ex.P17], it is clearly proved that the deceased would appear to have died of Cardiac Arrhythmia, due to electric shock.

13.It is further submitted that the the body of the deceased was found in the field of the petitioner, for which PW1 to PW4 are the witnesses. PW5 produced [Ex.P8] the patta and chitta particulars of the petitioner's land. Ex.P10 is the report of the Tamil Nadu Electricity Board and from Ex.P10, it is proved that the petitioner was availed free agriculture electric connection. The petitioner was arrested on 14.10.2016 and he gave confession [Ex.P23]. Pursuant to the confession, MO3 & MO4, the fuse carrier and black colour wire were seized from the field of the accused.

14.This is a case of circumstantial evidence and the prosecution by producing cogent materials and evidence, connected each links properly and proved that the petitioner had put up illegal electric fencing and caused endanger to the life. Due to illegal electric fencing, PW2's son Harish got electrocuted and died. The trial Court on the evidence and materials adduced by the prosecution, had convicted the petitioner. The lower appellate Court confirmed the conviction and sentence of the trial Court and dismissed the appeal. Both the Courts below have given cogent reason in convicting petitioner. Hence, he prayed for dismissal of the revision.

15.This Court considered the rival submissions and perused the materials available on record.

16.It is seen that in this case PW1 was informed by PW2 that her son got trampled in electric fencing put up by the petitioner in his field. Thereafter, PW1 and PW4 had gone to the Police Station and lodged a complaint [Ex.P1] to PW13. PW13 received the complaint [Ex.P1] and registered FIR [Ex.P18]. PW1 is the Panchayat President of the village. PW4 admitted that he is working under PW1. PW2 and PW3 stated that they were 30 feet away from the scene of occurrence and on hearing the cry, they rushed to the scene of occurrence and found the deceased got tampered in the electric fencing.

17.PW1 to PW4 were given exaggerated version contrary to each other. PW5/VAO reached the scene of occurrence even before Police could reach. PW5 categorically stated that when she reached the scene of occurrence, the body was not there. When she enquired the same, she was informed that the deceased was taken to nursing home of one Dr.Porchezhiyan at Koogaiyur. Later, the body was brought back and laid down on the field. The fact of body was not in the scene of occurrence is confirmed by PW6 and PW7. On the contrary, PW1 to PW4 stated that the body of the deceased was not taken from the scene of occurrence and it was there through out the day. Hence, the presence of PW1 to PW4 more specifically PW2 and PW3 in the scene of occurrence becomes highly doubtful. Likewise, PW5/VAO admitted that there is no provision for usage of computer for typing as well taking print out. PW5 stated that all the documents were typed and print out was taken in the Police Station, more specifically the Observation Mahazar [Ex.P6], the Seizure Mahazar [Exs.P9] and the Inquest Report [Ex.P22]. Hence, the vital documents were prepared in the Police Station. Hence, the seizure of MO1 and MO2 become highly doubtful and it would further fortified the fact of PW1 to PW4 and PW14 not present in the scene of occurrence. PW8 and PW9 are the witnesses for the arrest, confession [Ex.P23] and seizure of Material Objects [MO1 to MO4]. Thus two witnesses are very categorical that Exs.P23 & P24 were prepared and it was signed by them in the Police Station. PW8/VAO and PW9/Village Assistant are not ordinary persons. Hence, the preparation of documents [Exs.P6, P9, P20, P21, P22, P23 & P24] becomes highly doubtful.

18.PW10, the Postmortem Doctor gave a report [Ex.P15] that the deceased would have appear to have died Cardiac Arrhythmia, due to electrical shock and he was found with injuries, which caused due to electric shock. PW6/Junior Engineer clearly stated that the power connection No.156 was in the name of the Seerangayee and not in the name of the petitioner. Further MO1

and MO2 were not connected with power connection No.156. PW6 stated that on the date of occurrence, there was no fuse and power cut in the transformer. Normally due to electrification, the fuse carrier in the transformer get disconnected and there would be disconnection of power. There was no such disconnection of power taken place. Further, on the direction of PW16/Investigating officer, PW7 disconnected the black wire and produced the same to him. PW7/Wire man of the area confirmed that MO1 and MO2 were not connected with power connection No.156 and he acted as per the direction of PW6/Junior Engineer in seizure of MO1 and MO2. In certain terms, PW6 and PW7 have stated that there was no power connection to the barbed wires seized from the PW1's field.

19.It is seen that MO1 and MO2 seized from the scene of occurrence, were used for holding the drip irrigation pipe and not used for fencing, which is admitted by the witnesses. Thus, from the evidence of PW6 and PW7, it is clearly seen that there was no electrification to the barbed wires. In the Observation Mahazar [Ex.P6], there is no nothing to show that the electrification of the barbed wires.

20.This is the case of circumstantial evidence and the links are not properly connected by cogent evidence and materials. On looking the case, from any angle, it cannot be conclusively held that the petitioner had drawn electricity from the power connection No.156 in his field. Hence, the prosecution has failed to prove the case beyond reasonable doubt against the petitioner.

21.In the result, the judgment, dated 31.08.2020, made in Cr1.A.No.67 of 2019 passed by the learned III Additional Sessions Judge, Villupuram @ Kallakurichi and the judgment dated 08.08.2019 in S.C.No.177 of 2017 passed by the learned Assistant Sessions Judge, Kallakurichi are set-aside and the revision is allowed. The petitioner is acquitted of all the charges levelled against him. The Bail Bond, if any, executed stands cancelled. Consequently, the connected Miscellaneous Petition is closed.

22.It is made clear that the petitioner depositing the amount is only on humanitarian consideration and it is not taken as admission of the guilt of the petitioner.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

1.The III Additional Sessions Court,
Villupuram @ Kallakurichi.

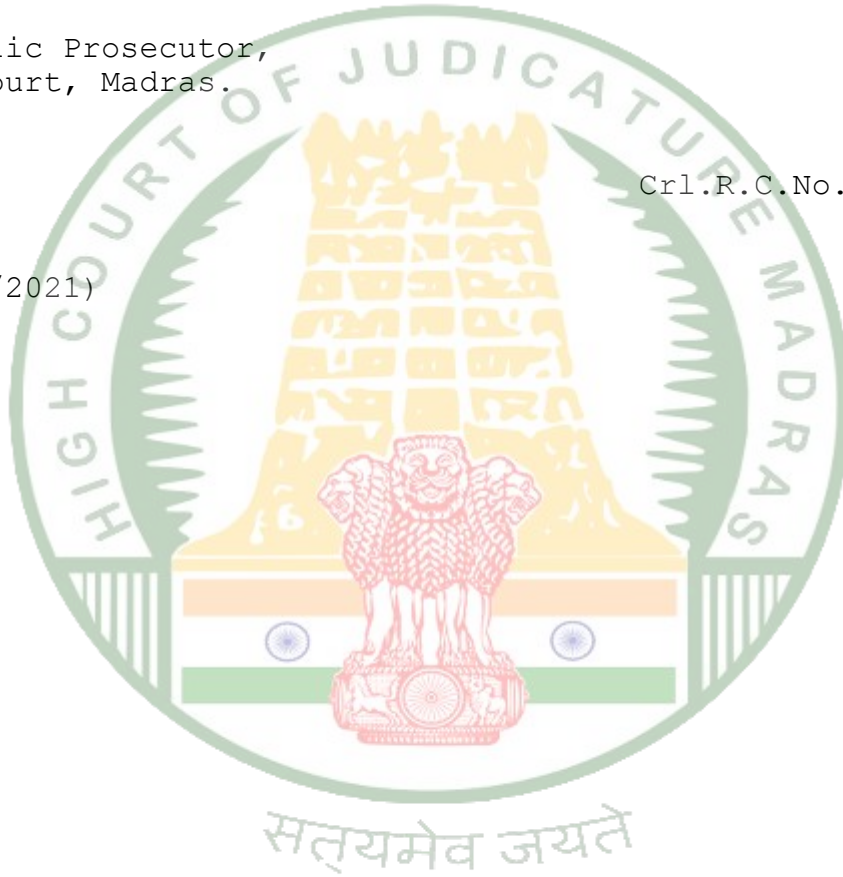
2.The Assistant Sessions Court,
Kallakurichi.

3.The Inspector of Police,
Keelkuppam Police Station,
Kallakurichi District.

4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.968 of 2020

MGR (CO)
RMP (16/02/2021)



WEB COPY