



Crl.A.No.146 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.146 of 2020

Mohamed Musthafa

... Appellant

Vs.

State by
The Inspector of Police,
B1, Bazaar Police Station,
Coimbatore.

... Respondent

Prayer:

Criminal Appeal filed under Section 374 (2) Cr.P.C., to call for the records and set aside the conviction and sentence imposed against the appellant on 17.02.2020 in S.C.No.7 of 2018 on the file of the V Additional District and Sessions Court, Coimbatore and acquit the appellant.

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.R.Murthi
Government Advocate (Criminal Side)



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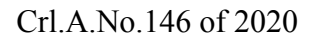


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JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 17.02.2020 passed in S.C.No.7 of 2018 on the file of the V Additional District and Sessions Court, Coimbatore.

2. The respondent police registered the case in Crime No.577 of 2017 against the appellant for the offence punishable under Section 304(i) IPC. After investigation, the respondent laid a charge sheet before the Judicial Magistrate No.V, Coimbatore and the same was taken on file in P.R.C.No.34 of 2017 and the learned Judicial Magistrate committed the case to the learned Principal District and Sessions Judge, Coimbatore, since the offence under Section 304 IPC is exclusively triable by the Court of Session. The learned Principal District and Sessions Judge, Coimbatore has taken the case on file in S.C.No.7 of 2018 and made over the same to the V Additional District and Sessions Judge, Coimbatore for disposal of the case. The learned Additional District and Sessions Judge has taken the case on file and framed the charge against the appellant for the offence under Section 304(i) (two counts) IPC.



4. The specific case of the prosecution is that the electricity connection to the house of the appellant was disconnected due to faulty and burnt wire. The electricity connection would be restored after making necessary payment by replacing the wire for getting connection from the Electricity Board. The appellant failed to pay and did not restore the electricity connection. But, he



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unauthorizedly got the connection from the house of one Amsa, which is situated opposite to his house. He also gave connection to the old shed which is used for playing carrom, by winding the damaged wire upon an iron pole without proper insulation. On 07.06.2017 at about 1.45 pm, when it was raining, the deceased Salman who went to clean the ditch on the back side of his house that was stagnated due to rain along with his sister Banu. While returning home, the deceased touched the iron pole in which the accused had taken the electric wire and sustained electric shock and fell down. On seeing the same, his sister, Banu tried to lift his brother and suffered an electric shock and fell down and sustained head injury. Due to the same, both of them were succumbed to death. Hence the complaint.

5. Learned counsel for the appellant would submit that the deceased died because of electric shock and hence, offence has not come under the purview of Section 304(ii) IPC. He further submitted that the appellant had no intention to take away the life of two persons. Due to heavy rainfall and wind, the electric wire was disconnected from the joint and due to that there was passing of electric current. Without knowing the fact, when the children



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passed through the place, they sustained electric shock and they succumbed to

death. The incident is an unexpected and unfortunate one, for which the appellant is no way connected with the same. The accident had occurred due to electric shock and death had not occurred due to the negligence of the appellant. There is no *mens rea* made out as against the appellant to cause death of the deceased children. He further submitted that the the appellant was convicted by the trial court based on three witnesses P.W.1, P.W.2 and one Fathima Bibe, who were the complainant and relatives of the deceased children and they are not eye witnesses. They had not known the occurrence. Further, he submitted that P.Ws.4 to 8 were turned hostile and even P.W.4-mahazar witness has not supported the case of the prosecution. P.Ws.9 and 10 were working in the Electricity Office and their evidence is un-believable. Death of the victims are not due to negligence on the part of the appellant and it is only due to electric shock. Hence the judgment of conviction and sentence passed by the trial court is liable to be set-aside and the appeal may be allowed.



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6. Learned Additional Public Prosecutor submitted that when the electric connection of the appellant was disconnected and he unauthorizedly on his own, took electric supply from the house of P.W.6 Amsa and P.W.7 Amina to his house. Further he took electric connection to the shed which is used for playing Carrom across the road. Due to the act of the accused taking electric wire connection, the deceased died due to electrocution. Since the neighbor of the appellant who facilitated to take the electric connection from his house has paid the electricity charges as per the metre, hence there was no electricity theft was made out and no case has been registered as against the appellant under the Electricity Act. However the accused has intentionally has taken the electric wire in a dangerous and unsafe manner, thereby, caused death of the deceased. Hence, the appellant has committed the offence punishable under Section 304(i) IPC. The trial court rightly appreciated the evidence, convicted the appellant for the offence under Section 304(ii) IPC. There is no merit in the appeal and the same is liable to be set aside.



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

8. According to the prosecution, the deceased died due to electric shock. The appellant's act is the cause for the incident. Hence, charge has been framed as against the appellant for the offence punishable under Section 304(i) IPC. In order to substantiate the charge on the side of the prosecution, totally 18 witnesses were examined ad P.W.1 to P.W.18. 23 documents have been marked as Ex.P1 to P.23. Besides, three material objects were also exhibited as M.O.No.1 to M.O.No.3. Father and mother of the deceased children were examined as P.W.1 and P.W.3, respectively. Brother of the deceased was examined as P.W.2 and has categorically stated about the incident that on 07.06.2017 at about 1.00 pm when P.W.2 was standing near the Mosque. He heard the noise in his area and rushed to the spot and saw that his brother had leaned against the electric rod and his sister Banu lied on the ground. When he tried to touch them, he felt the electric earth shock and he removed the deceased with the help of wooden stick and took them to hospital. P.Ws.4 and



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5 have also corroborated the evidence of P.W.2. P.W.1, the father of the deceased lodged the complaint before the respondent police. Based on the complaint, the respondent police registered the case and investigated the matter. P.W.9-Assistant Electric Engineer, Ukkadam Electricity Board along with P.W.10, Foreman, and Electric Line Inspector inspected the electric post by switching off the electric supply from the transformer. On inspection, they found that a silk wire was used in a pole near the house of Amsa and the said wire was in a damaged condition and they found that electricity has leaked through the damaged portion.

9. As per evidence of P.W.9, on inspection, it is found that the electric wire was taken from the low level area, where the shed was located with the support of said iron pole. The electric wire was cut in various places and found in damaged condition. It reveals that the electricity has leaked through the damaged portion in the said wire. In this regard, he has given report Ex.P6. From the evidence P.W.15, who conducted postmortem of the body of the deceased, the prosecution proved that the deceased died due to electrocution and the same has been caused due to the act of the appellant. Though the act



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committed by the appellant is not an intentional one, however, prudent man would have expected that there is a possibility of causing damages to the property or the person if he has taken the electricity by unusual method.

10. The trial court rightly appreciated the evidence and though not convicted the appellant for the offence under Section 304(i) IPC, found the appellant guilty for the offence under Section 304(ii) IPC. For better understanding, the relevant sections of the Indian Penal Code are extracted hereunder:

Section 304 of IPC: Punishment for culpable homicide not amounting to murder:

whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.



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Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

304A: Causing death by negligence: *Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Section 300(iv) of IPC *If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury aforesaid.*

Therefore, reading of the entire materials and also the provisions of law, the act committed by the appellant falls under Section (iv) of 300 IPC punishable under Section 304(ii) IPC. The trial court rightly appreciated the evidence and convicted the appellant. Since this Court is the appellate court, it is a final



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court of fact finding, it has to re-appreciate the entire evidence and give finding independently. This Court finds that there is no merit in the appeal and the same is liable to be dismissed. However, considering the fact that the accident is an un-intentional one, sentence of imprisonment alone is, hereby, reduced from ten years rigorous imprisonment to five years rigorous imprisonment which would meet the ends of justice.

11. This Criminal Appeal is dismissed with the abovesaid modification. Consequently, connected miscellaneous petition, if any, is closed. Since the appellant is on bail, trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of imprisonment already undergone by the appellant/accused shall be set-off under Section 428 Cr.P.C.,

04.01.2023

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Index:yes/No
Internet:yes/No



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P.VELMURUGAN, J.

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To

1. The V Additional District and Sessions Judge,
V Additional District and Sessions Court,
Coimbatore.
2. The Inspector of Police,
B1, Bazaar Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

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