



Criminal Appeal No.239 of 2016

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.239 of 2016

Umaiya Pillai
S/o.Mottaiya Pillai

... Appellant/Accused No.1

Vs.

The State represented by
Inspector of Police,
Sankarapuram Police Station,
Sankarapuram Taluk,
Villupuram District.
Crime No.270 of 2008

... Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374 (2) of the Code of Criminal Procedure against the judgment dated 14.03.2016 passed by III Additional District and Sessions Judge, Kallakurichi, Villupuram District, in S.C.No.56 of 2009.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.L.Baskaran
Government Advocate [Crl.side]



Criminal Appeal No.239 of 2016

WEB COPY

JUDGMENT

This Criminal Appeal has been filed against the judgment and order passed by the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District, in S.C.No.56 of 2009, dated 14.03.2016, convicting the appellant for offence u/s.304(2) IPC and sentencing him to undergo three year rigorous imprisonment and to pay fine of Rs.25,000/- in default to undergo one year imprisonment. The fine amount that was fixed was directed to be paid as compensation to the family of the deceased Natesan u/s.357 Cr.P.C.

2. The case of the prosecution is that

2.1. the appellant was the owner of agricultural lands at Sembarampattu village. He had taken steps to prevent rats from destroying the crops and hence, he fenced the agricultural lands with wire and drew electricity by putting a hook in the main electricity line and this electricity was made to pass on to the fence that was put up by the appellant. The appellant made this arrangement with the help of other accused persons after



WEB COPY

knowing fully well that it will endanger the life of persons, who come in contact with the wire fence. On 18.04.2008, at about 11.00 p.m., the deceased Natesan was going to his agricultural land to irrigate the same and at that point of time, he came in contact with the live wire fencing and he was electrocuted and he died on the spot.

2.2. The further case of the prosecution is that on 19.04.2008, the accused persons saw the deceased Natesan lying dead near the agricultural lands and in order to conceal the same, the accused persons lifted the body of deceased Natesan and placed it in the property belonging to Sampath Pillai and covered it with straws.

2.3. PW-1, who is the son of deceased, found that the deceased did not come back home and he searched for the deceased and he was informed by one Vellayutham that the deceased was lying dead covered with straws. This was immediately informed by PW-1 to Sankarapuram Police Station.



WEB COPY

2.4. PW-12, who is the Sub-Inspector of Police, received information from PW-1 on 19.04.2008 at about 11.00 a.m. and a complaint [Ex.P1] was also given by PW-1. Based on the same, a First Information Report [Ex.P16] was registered in Crime No.270 of 2008 for offences u/s.304 and 201 IPC as against the appellant.

2.5. The investigation was taken up by PW-13, Inspector of Police and he went to the scene of incident at about 12.00 noon and prepared observation mahazar [Ex.P18] and rough sketch [Ex.P17]. He also found a seven feet wire connected to the main electricity line through a hook and also 20 wooden sticks around the property embedded in the soil. Those articles were seized under seizure mahazar marked as Ex.P19 and the articles that were seized were marked as MOs.1 to 3.

2.6. PW-13 conducted inquest on the body of the deceased in the presence of Panchayatdars and prepared an inquest report, which was marked as Ex.P20. Thereafter, PW-13 took steps to send the dead body of



the deceased Natesan to the Government Hospital, Sankarapuram, for postmortem.

2.7. The postmortem was conducted by PW-7 and the postmortem certificate was marked as Ex.P11. The external injuries recorded in the postmortem certificate are extracted hereunder:

'External injuries:

1. A burn wound about 2½ cms. x ½ cms over the anterior aspect of right leg below right knee joint 1 cm - Point of Entry.
2. A burn wound 2 x ½ cms. over the anterior aspect of the left leg below left knee joint - Point of Entry.
A burn wound about 1 cm x ¼ cm over the left fore arm just above the wrist joint.
3. A burn wound about 2 x ½ cms. over the anterior aspect of left leg just above ankle joint.
4. An abrasion about 2 x ½ cms. over the right parietal region just above the right ear.'

2.8. PW-7, on receipt of chemical analysis report, which was marked as Ex.P12, gave a final opinion to the effect that the deceased would appear to have died of cardiac arrest due to electric shock.

2.9. PW-13, in the course of investigation, arrested the appellant on



WEB COPY

19.04.2008 at about 06.00 p.m. and his confession was recorded in the presence of witnesses. The admissible portion of the confession was marked as Ex.P22 and based on the same, the wire [MO-4] was recovered. Similarly, the other two accused persons were also arrested on the same day at about 10.30 p.m. The arrested accused persons were produced before the Court and they were remanded to judicial custody.

2.10. PW-13 recorded the statement of witnesses u/s.161(3) Cr.P.C., collected all the reports and completed the formalities. Ultimately, the final report was laid before the Judicial Magistrate, Sankarapuram, as against four accused persons. Since A4 was a juvenile, his case was spilt up and sent to the Juvenile Justice Board.

2.11. Learned Judicial Magistrate, Sankarapuram, served copies on the accused persons [A1 to A3] u/s.207 Cr.P.C. and the case was committed u/s.209 Cr.P.C. and was made over to the III Additional District and Sessions Court, Kallakurichi.

2.12. The trial Court framed charges against the accused persons in



the following manner:

Sl.No.	Rank of the accused	Charges framed u/s.
1.	A1 & A2	304(2) IPC
2.	A1 to A3	201 IPC

The charges were put to the accused persons and they denied the same as false.

2.13. The prosecution examined PWs.1 to 13 and marked Exs.P1 to P24 and identified and marked MOs.1 to 4. The incriminating evidence that was gathered against the accused persons in the course of trial was put to them, when they questioned u/s.313(1)(b) Cr.P.C. and they denied the same as false.

2.14. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has made out a case beyond reasonable doubts as against the appellant for offence punishable u/s.304(2) IPC and accordingly, the appellant was sentenced. A2 and A3 were acquitted from all



Criminal Appeal No.239 of 2016

WEB COPY

charges and the appellant was also acquitted from the charge u/s.201 IPC.

Aggrieved by the same, the present criminal appeal has been filed before this Court.

3. Heard Mr.P.Jagadeesan, learned counsel for appellant and Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for respondent.

4. This Court has carefully considered the submissions made on either side and the materials available on record.

5. PW-1 is the son of the deceased. He has stated that on 18.04.2008, at about 11.00 p.m., his father went to his agricultural land for irrigating the same and thereafter, he never returned back home till the next day up to 11.00 a.m. Thereafter, PW-1 went in search of his father and ultimately, the dead body of his father was found lying covered by straws. This was informed to the police and PW-1 found that the appellant had erected a fence



WEB COPY

around his agricultural lands and had electrified it by drawing electricity from the main line by connecting it with a hook. Since the father of PW-1 came in contact with the live electric fencing, he died due to electrocution.

6. PWs.4 and 5 have also stated in their evidence that they found a hook that was connected to the main electricity line and was hanging over the agricultural lands belonging to the appellant. Ultimately, the wire that was surrounding the agricultural lands of the appellant was recovered only after the appellant was arrested and based on his confession. The twenty wooden sticks that were embedded in the agricultural land belonging to PW-1 were also seized from the spot.

7. The evidence of PW-10 also gains significance. He was also called to the scene of crime and he found the wire that was connected through a hook to the main electricity line. He was also shown the material objects that were recovered from the appellant.



WEB COPY

8. The evidence of PW-13 read along with the observation mahazar, which was marked as Ex.P18 and the rough sketch marked as Ex.P17, gives a clear idea about the topography of the place and the fact that the appellant, had, in fact safeguarded his agricultural lands by fencing it with wire and made arrangements to pass on electricity to the same to prevent rats from destroying the crops.

9. The case of the prosecution hinges upon circumstantial evidence. The main circumstances that have been put against the accused persons is the evidence of witnesses, who had seen the place of occurrence and noticed the availability of electric wire in the land of the appellant. That apart, the evidence of postmortem doctor has been relied upon to substantiate that the deceased had died due to electrocution. The dead body was found in the adjacent land covered by straws and there was absolutely no other explanation as to how the deceased could have been electrocuted except in the agricultural land belonging to the appellant. The Court below has properly assessed the entire evidence available on record and has come to



WEB COPY

the conclusion that the wire fencing made by the appellant to prevent rats from destroying the crops, had unfortunately led to the death of the deceased Natesan, who got electrocuted when he came in contact with the live wire. This incident had taken place in the night when Natesan had gone to irrigate his land and he was not aware about the live wire around the agricultural land belonging to the appellant. The evidence available on record and the findings of the trial Court establish the case of prosecution and this Court does not find any ground to come to a different conclusion. Hence, the death of Natesan had taken place only due to electrocution and such electrocution had happened when the appellant had secured his agricultural lands by fencing it with wire which was connected with electricity and the said Natesan came in contact with the same.

10. The next issue to be taken into consideration is as to whether the Court below was right in punishing the appellant for offence u/s.304(2) IPC.



WEB COPY

11. When a Court is confronted with the question as to whether the offence is a murder or a culpable homicide not amounting to murder, the problem has to be approached in three stages. The first stage is to see the act done by the accused which caused the death of other person. In other words, there must be a live link between the act and the resultant death of the concerned person. The second stage is to see as to whether the act of the accused amounts to culpable homicide as defined u/s.299 IPC. If the answer to this question is in the affirmative, the case reaches the third stage of seeing if the ingredients u/s.300 IPC is made out. It is only at this stage, the Court has to determine whether the case falls u/s.300 IPC and thereby fulfills the requirements of a murder or it remains only within the ingredients provided u/s.299 IPC and should be treated as culpable homicide not amounting to murder. In a case where both Sections 299 and 300 IPC are not satisfied, the Court has to see if the case falls u/s.304-A IPC, if the death is caused due to negligence. The Court has to see if the death was caused due to rash and negligent act on the part of the accused persons.



WEB COPY

12. Applying the above test to the facts of the present case, this Court finds that when the appellant had fenced his property and had connected it to electricity, he did not intend to do the same to commit culpable homicide. His only intention was to prevent his agricultural lands from being attacked by rats. In view of the same, the ingredients of neither Section 299 IPC nor Section 300 IPC are satisfied in this case.

13. A close analysis of the facts of the present case clearly bring this case within the requirements of Section 304-A IPC. When the appellant had fenced his property and had connected it to electricity, he is expected to know, as a prudent man, that if any one comes in live contact with the wire, they will be electrocuted and it may cause the death of a person. Unfortunately, this is what had happened in the present case. Therefore, the act of the appellant can be termed as a rash and negligent act not amounting to culpable homicide. Hence, on the facts of the present case, the appellant is liable to be convicted for offence u/s.304-A IPC. To that extent, the conviction imposed by the trial Court convicting and punishing the appellant



Criminal Appeal No.239 of 2016

u/s.304(2) IPC shall stand modified.

14. The next issue is with regard to sentence to be imposed as against the appellant. It is brought to the notice of this Court that the appellant had suffered incarceration during the pre-trial stage. The appellant is now aged about 65 years and it is also brought to the notice of this Court that his sons have abandoned him and he is doing agricultural work and eking out his livelihood. Taking into consideration the said fact, this Court is inclined to impose payment of compensation by the appellant to PW-1. The appellant was also directed by the trial Court to pay a fine of Rs.25,000/-, which was further directed to be paid as compensation to the family of the victim. Accordingly, the appellant has also deposited this amount and the same is evident from the petition filed seeking suspension of sentence, pending disposal of this criminal appeal. In view of the same, this Court is inclined to impose additional sum of Rs.50,000/- as compensation payable by the appellant to PW-1, thereby, the total compensation payable by the appellant is fixed at Rs.75,000/-. In short, the appellant is sentenced with the period of



Criminal Appeal No.239 of 2016

imprisonment already undergone and is directed to pay total compensation of Rs.75,000/-, in default, to undergo six months simple imprisonment.

15. In the result, this criminal appeal is partly allowed by modifying the conviction and sentence imposed by the Court below. The appellant is directed to deposit the balance compensation amount of Rs.50,000/- on or before 24.04.2023 before the trial Court. On such deposit, PW-1 is entitled to withdraw the entire amount of Rs.75,000/- deposited by the appellant by filing a proper memo before the trial Court and the same shall allowed by the trial Court.

N. ANAND VENKATESH, J

gm

Post this case under the caption 'FOR REPORTING COMPLIANCE'



Criminal Appeal No.239 of 2016

WEB COPY on 26.04.2023.

13.03.2023

Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
gm

To

1.The III Additional District and Sessions Judge,
Kallakurichi,
Villupuram District.

2.The Inspector of Police,
Sankarapuram Police Station,
Sankarapuram Taluk,
Villupuram District.

3.The Public Prosecutor,
High Court, Madras.

Criminal Appeal No.239 of 2016