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CrI.A.No.450 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.A.No.450 of 2016

Raja

... Appellant

Versus

State by Inspector of Police,
Valathi Police Station,
Villupuram District.
(Crime No.198/2008)

... Respondent

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the judgment of the learned Principal Sessions Judge, Villupuram, Villupuram District made in S.C.No.189 of 2010, dated 15.06.2016 and acquit the appellant / accused from the charges.

For Appellant : M/s.Ramesh Kumar Chopra

For Respondent : Mr.J.Subbiah
Government Advocate (CrI. Side)

JUDGMENT

On 03.06.2008, there was a festival in *Melmalayanur Arulmighu Angalamman Thirukovil*. The Trustees, the Executive Officer and the Committee which is responsible for conduct of festival, had taken a decision to temporarily erect makeshift barriers covered by tin sheets, so as to regulate the



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crowd, considering the large number of devotees. Unfortunately, when the devotees were standing in queue, the wire between two tube lights fixed by the Contractor temporarily for the festival, snapped resulting in electrocution and death of six devotees and thirty seven others suffered injury on account of the electric shock. Therefore, a case was registered in Crime No.198 of 2008 on the file of *Valathi* Police Station, *Villupuram* district under Section 304-A of the *Indian Penal Code* read with Section 139 of the *Electricity Act, 2003*. Though no specific names were mentioned in column No.7 of the First Information Report, the Executive Officer, the Trustees, the Electric Contractor, the person who manages the Rs.10/- tickets etc., were generally mentioned as the accused.

2. After investigation, a charge sheet was filed proposing five persons as guilty, namely, the first accused, *Raja*, who was the Electric Contractor for the festival (the '*sound service person*' in local parlance) and four of his employees. They were charged under Section 304(II) of the *Indian Penal Code* (6 counts) on the ground that even though it was expected of them to use high quality wire, inspite of their knowledge that using low quality wire will result in the death of the persons, they knowingly used the same and therefore, the charge. This apart, they were also prosecuted for the offense under Section 324 of the



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Indian Penal Code (37 counts) for causing injuries to thirty seven devotees, and under Section 135 of the *Electricity Act, 2003* on the allegation that for these purposes, they illegally tapped the electricity from the main electricity lines between two poles belonging to *TANGEDCO*.

3. Pending the trial, the second accused died. The prosecution examined *P.Ws.1* to *62*, most of whom are devotees who were standing in the queue and survived the incident, who spoke about the fact that they were standing in the queue and at that time the wire got snapped resulting in electric shock and thereby, the victims died and that they also suffered electric shock and injuries. On behalf of the prosecution, *Exs.A-1* to *A-44* were also marked which are mostly the copies of the Accident Register in respect of each of the victim and the respective postmortem reports of the persons who died. The prosecution also produced *M.O.1* which is the electric wire which got snapped.

4. The accused denied the material evidence and the incriminating circumstances on record as false upon questioning under Section 313 of the *Code of Criminal Procedure*. Thereafter, since no evidence was let in on behalf of the defence, the Trial Court proceeded to consider the arguments on behalf of both the sides and by a judgment dated 15.06.2016, found that the



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charges against the accused Nos.3 to 5 were not proved by the prosecution.

The Trial Court found the first accused guilty of the offense under Section 304(II) of the *Indian Penal Code* (6 counts) and imposed punishment of ten years Rigorous Imprisonment and a sum of Rs.5.000/- as fine for each count and in default of payment of fine, to undergo one year Rigorous Imprisonment; and also guilty of the offense under Section 324 of the *Indian Penal Code* (37 counts), sentenced to undergo one year Rigorous Imprisonment for each count and then of the offence under Section 135 of the *Electricity Act, 2003*, sentenced him to undergo three years Rigorous Imprisonment. Aggrieved by the same, the present Criminal Appeal is laid before this Court.

5. Heard *M/s.Ramesh Kumar Chopra*, learned Counsel for the appellant and *Mr.J.Subbiah*, learned Government Advocate (Crl. Side).

6. *M/s.Ramesh Kumar Chopra*, learned Counsel for the appellant, firstly, would contend that the very basis of the charge is that the first accused is an Electric Contractor. In this regard, inspite of specific cross-examination, the prosecution could not seize or produce any written contract to evidence that it was the first accused who was the Electric Contractor. Therefore, when the basic fact itself is not proved beyond the reasonable doubt, then the Trial Court



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ought not to have convicted the first accused. In any event, the basis of the charge is that the first accused used inferior quality wire resulting in the incident. So as to level the said allegation, it was incumbent on the prosecution to have proved that the Trustees or Management of the Temple had insisted upon using of a wire of a particular quality which was not used. There is absolutely no evidence on record regarding the same. As a matter of fact, the Trustees did not even had any knowledge as to whether there was any written contract or not. Therefore, there is absolutely no evidence on record for the very basis of the charge.

7. In any event, it is not only the snap of wire which has resulted in the incident. Unscientifically erecting the barriers with tin sheet is also a reason for the incident. When the First Information Report was registered against all persons responsible, when nothing to the *contra* has come out in the investigation, just because the first accused was an easy target, the Electricity Contractor alone was arrayed as the accused and the other employees, who worked under him who have fitted the tube lights, speakers etc., were also arrayed as accused. Therefore, in this case, the Investigating Officer has grievously erred in not even investigating as to who was responsible and without fixing the criminal liability, if at all had arisen out of the incident, and



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making only the Electric Contractor as the scapegoat is incorrect in law and therefore, he would pray that the appeal be allowed and the appellant be acquitted of all the charges.

8. Opposing the above said submissions, *Mr.J.Subbiah*, learned Government Advocate (CrI. Side) would submit that in this case, the reason for the accident is electrocution. All the witnesses have clearly spoken that the wire between the two poles, with which the tube lights were connected, snapped resulting in electrocution. Therefore, it is only the Electricity Contractor who is responsible. As a matter of fact, the appellant is an Electric Contractor and the Trustee of the Temple who was examined as **P.W.27** had clearly spoken about the fact that the tender was taken by the first accused alone and therefore, it cannot be said that the prosecution has not proved that the appellant is not the Electric Contractor. He would submit that the Trial Court therefore considered the evidence on record and since six persons died, taking into account the gravity of the offence, had imposed punishment of ten years Rigorous Imprisonment. He would therefore pray that the same does not require any interference by this Court.

9. I have considered the rival submissions made on either side and perused the material records of the case. Firstly, in this case, while the First



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Information Report was correctly registered by arraying all persons responsible

as the accused, during the course of investigation, for the reasons best known to the Investigating Officer, every other person has been left out and as if the death happened only because of the inferior quality of wire which is used and the charge is laid. In this context, *Melmalayanur Arulmighu Angalamman Thirukovil* is one of the famous Temples to which large number of devotees visit during the festival times. Therefore, in order to deal with the crowd, when the Trustees, the H.R & C.E Department officials, the Executive Officer and all persons namely, the Committee which conducts festival, decided to erect these makeshift barriers, it was incumbent and duty bound upon them to erect in such a manner to avoid any accident. They have to apply their mind that if tin sheets and iron poles are used, there is every possibility of electric shock in case of leakage of electricity and especially, when huge crowd devotees are made to stand underneath, there is a huge risk of electrocution. This part of the world is replete with '*Thennangkeetru*' (knitted coconut leaves) and other organic materials for erecting shelters, but fearing fire accidents the same are avoided. But these tin sheets are proving to be more dangerous as may be seen in the instant case. Therefore, whenever Temple festival is being organised, the Standard Operation Procedures have to be framed first by them so that all precautions should be taken to avoid any kind of accidents / mishaps.



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10. In this case, they failed and omitted to do so. In a haphazard manner, temporary lights etc., were fitted in and around and the interconnecting wires were lined above the shelter made of tin sheets. Therefore, if for any reason, wire snaps, there will be electrocution. Firstly, manual precautions are to be strictly followed avoiding lines on top of such shelters. Secondly, more scientific ways such as installations of Trip Switches or such modern equipments are to be used. The festival was arranged in a casual manner, without considering all these things which resulted in the death of six persons and thirty seven persons getting injured.

11. Now, therefore, the question before this Court is that whether the Electric Contractor alone has to be fastened with the liability, more specifically, criminal liability. Firstly, to establish a charge under Section 304(II) of the *Indian Penal Code*, it is essential that the act should be done with the knowledge that it is likely to cause death. The case of the prosecution is that the appellant herein is supposed to use high quality wire and with the knowledge that by using low quality wire, he is likely to cause death, he has done so. In this regard, as rightly contended by the learned Counsel for the appellant, there is no written contract or the terms of the tender which is



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produced by the prosecution. When **P.W.27** has categorically asserted that he has floated the tender and the appellant was the successful bidder in the tender, it was incumbent on the prosecution to have produced the terms of the tender, under which, the appellant is ordered to use a particular quality of wire. Only if a type of wire is prescribed and that the appellant has not used the same, then alone the offence will be made out. Unfortunately, this view of the matter has not at all been considered by the Trial Court. Therefore, I am of the view that the offense under Section 304(II) of the *Indian Penal Code* is not at all made out as against the appellant.

12. However, it is a settled proposition of law that whenever a charge in respect of a higher offense of the same genus is leveled and if the allegation proved by the prosecution make out a lesser offense, even without framing a charge, the accused can be punished for the lesser charge. I am of the view that in the instant case, all that is committed by the appellant is that when connection was given and when the wire was taken in a crude manner above the tin sheet, no care was taken that the wire was properly tied and secured so that it will not snap or if there is any joint in between, the joined wire should have been avoided and proper connection should have been given. Therefore, at best, the act committed by the appellant would only amount to causing death



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by negligence. Accordingly, I hold that the appellant would only be liable to be punished for an offence punishable under Section 304A of the *Indian Penal Code* (6 counts).

13. As far as the offense under Section 324 of the *Indian Penal Code* is concerned, it cannot be said that with an intention, the appellant caused hurt and thereby, he used any dangerous weapon or means. For the same reasons, only the lesser offense under Section 337 is made out. Similarly, as far as the offense under Section 135 of the *Electricity Act, 2003* is concerned, it is not a theft of energy which is happening in any agricultural field or in any undisclosed location. When for the Temple festival, if electricity is stolen, that liability will have to be fastened only on the Trustee of the Temple and the Executive Officer who are responsible for providing electricity. Therefore, convicting the Electric Contractor without any evidence as to whether he did connect from the *TANGEDCO* line either on his own or on the instructions of the the Trustees, the appellant is entitled for benefit of doubt in respect of the said offense also.

14. Now, considering the sentence, the nature of act committed by the appellant is discussed *supra*. For the said act, it is seen from the records that



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immediately after the registration of the case, from 04.06.2008 i.e., from the date of the arrest of the appellant until the date on which he was granted bail i.e., on 29.07.2008, the appellant was in prison for 45 days. Similarly, after the conviction of the Trial Court, again, he was in prison for 74 days, in all totalling to 119 days. I am of the view that the said period undergone by the appellant would be an appropriate punishment for the offense committed by him. Fine amount shall be the same i.e., sum of Rs.5,000/- for each count (6 counts).

15. In the result, this Criminal Appeal in Crl.A.No.450 of 2016 is partly allowed on the following terms:-

(i) The conviction and sentence imposed on the appellant by the judgment, dated 15.06.2016 by the learned Principal Sessions Judge, *Villupuram, Villupuram* district in S.C.No.189 of 2010 is set aside by modifying the conviction of the appellant under Section 304(II) of the *Indian Penal Code* (6 counts) into one under Section 304-A of the *Indian Penal Code* and the



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conviction under Section 324 of the *Indian Penal Code* into one under Section 337 of the *Indian Penal Code*;

(ii) The appellant is acquitted for the offense under Section 135 of the *Electricity Act, 2003*;

(iii) For the offense under Section 304-A of the *Indian Penal Code* (6 counts), and Section 337 of the *Indian Penal Code* (37 Counts), the period already undergone by the appellant shall be treated as the substantial sentence of imprisonment and further, the appellant is liable to pay a fine amount imposed by the Trial Court of Rs.5,000/- for each count for the offense under Section 304-A of the *Indian Penal Code* and the fine amount already paid by him shall be set off against the same.

25.04.2023

Index : yes



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Speaking order

Neutral Citation : yes

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Note:- A copy of this judgment is marked to the Commissioner, H.R. & C.E Department, Chennai for his notice and for taking such measures to prevent this kind of mishaps in future.

To

1. The Principal Sessions Judge,
Villupuram, Villupuram District.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Valathi Police Station,
Villupuram District.



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D.BHARATHA CHAKRAVARTHY. J.,
grs

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