



Crl.A.No.502 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :31.03.2023

Pronounced on :17.04.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.502 of 2020

R.Subramani Naidu

.. Appellant

/versus/

State by:

Inspector of Police,
Pothatturpet Police Station,
Thiruvallur District.
(Crime No.26 of 2015)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the conviction order dated 23.11.2020 passed against the accused/appellant in S.C.No.316 of 2016 on the file of the Principal Sessions Judge at Thiruvallur and acquit the accused/appellant in the above case.

For Appellant :Mr.P.Govindarajan for
Mr.R.Rajasekaran

For Respondent :Mr.R.Krishore Kumar
Government Advocate (Crl.Side)



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JUDGMENT

On 29.01.2015, at about 10.00 a.m., one Chinnathambi, S/o Sanjeevi, gave a complaint to the Sub Inspector of Police attached to Pothatturpet Police Station, informing that his father Sanjeevi an agriculture labourer and lessee of land situated at Pothatturpet owned by one Elumali went to the field on 28.01.2015 at 10.00 p.m from his house to watch the field, where the harvested paddy kept. While crossing the land of one Subramani Naidu, S/o Ramaiya Naidu, he was electrocuted. Since the said Subramani Naidu has put up electrical fence illegally to protect his groundnut field, unknowingly, his father, who crossed the field, died due to electrical shock. On the next day morning i.e. on 29.01.2015 at 06.30 a.m, the passerby noticed and informed him about his father death. Therefore, to take action against the said Subramani Naidu, a complaint was given and the same was registered in Crime No.26 of 2015 under Section 304 of IPC.

2. On obtaining a post-mortem certificate and recording the statements of the witnesses, the Inspector of Police, Thiruvalangadu, filed a charge sheet that:

“The Inspector of Police, Thiruvalangadu Police Station filed charge sheet against the accused namely, Subramani Naidu, S/o Ramaiya Naidu, by contending that the accused is owner of the land



in Konasamuthiram Village and the deceased was cultivating tenant of the land of one Elumali. The accused without any proper permission from Electricity Board in his agricultural service connection No.355-007-527/5HP through binding wire erected fence in his land and made electric energy to pass through the wire on and before 28.01.2015 at the behest of avoiding animals from destroying his groundnut crop. The accused used the electricity for purpose other than for which usage of electricity was deemed to be authorised normally and hence, the accused is liable to be punished under Section 135(1) (e) of the Electricity Act, 2003. In the course of same transaction on 28.01.2015 at about 22.00 hours to 29.01.2015 and before 06.30 hours, the accused caused death of Sanjeevi, S/o Sriramareddy by putting up an electrical fence around his agricultural land of groundnut crops with the knowledge that his act was likely to cause the death of any person who came in to physical contact with the electrical fence put up by him and the said Sanjeevi died due to electrocution when he encountered the said fence while he passed through land of accused and thereby the accused committed the offence of culpable homicide not amount to murder and hence liable to be punishable under Section 304 of IPC.”

3. On taking cognizance of the report, the matter was made over to the Sessions Court, since the offence is exclusively triable by the Court of Sessions. On perusing the materials relied on by the prosecution, the Principal District and Sessions Court, Thriuvallur, framed charges under Section 304 of IPC and Section 135 (1) (e) of the Electricity Act, 2003 against the accused-Subramani Naidu.

4. To prove the charges, the prosecution has examined 10 witnesses and marked 10 exhibits and two material objects. On appreciation of the evidence, the



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trial Court held both the charges proved and sentenced the accused to undergo four years RI and to pay a fine of Rs.5,000/- in default of payment of fine, one year RI for the offence under Section 304 (ii) of IPC and sentenced him to undergo one year RI for the offence under Section 135(1)(e) of the Electricity Act, 2003. The term of sentence ordered to run concurrently and the period of sentence already undergone was ordered to be set off under Section 428 of Cr.P.C. The Legal Service Authority was recommended to pay necessary compensation to the dependence of the deceased under the Victim Compensation Scheme. Aggrieved by the said conviction and sentence, this Criminal Appeal is filed by the accused.

5. He along with his brother (PW-2) and sister went to the land of the accused Subramani Naidu, found that his father less charred in his shoulder, hip and back were also found charred. Hence, he gave a complaint (Ex.P1). PW-9, Sub Inspector of Police, Pothaturpet Police Station, registered the complaint. The printed copy of the First Information Report is Ex.P7. PW-10, the Inspector of Police took up the investigation, went to the scene of occurrence, prepared observation mahazar(Ex.P2) in the presence of Annamalai (PW-3) and one Thangavel(not examined); rough sketch (Ex.P8) was prepared. PW-10, Inspector



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of Police, recovered 9 numbers of irregular shaped forest wooden stick about 2 ½

feet of height and 2kg iron binding wire under the recovery mahazar (Ex.P3). The

body of Sanjeevi was sent to the Government Hospital, Thiruttani, for post

mortem. Inquest was conducted on the spot and the Inquest report is marked as

Ex.P9. The body, which was sent for post-mortem to the Government Hospital,

Thiruttani, was received by PW-8 Dr.Manjupriya from PW-7 Head Constable

along with the request letter. On conducting the autopsy, PW-8[Dr.Manjupriya]

opined that the deceased died due to electrocution/cardiac arrest. The post mortem

certificate is marked as Ex.P6. The internal organs were sent for analysis and

viscera report given by PW-6 through Mr.Mohan, Scientific Officer is marked as

Ex.P5. Another complaint against the accused lodged by Mr.K.S.Pandian, Junior

Engineer (PW-5), TNEB, alleging that the accused, without proper permission has

put up the electric fence in his land and while passing through the land, Sanjeevi

died due to electrocution. The complaint lodged by PW-5, Junior Engineer, with a

statement that between 28.01.2015 and 29.01.2015, there was no power cut in that

area. The accused was arrested on 29.01.2015 at 16.00 hours and remanded into

the Judicial Custody. The complaint under Section 304 of IPC was altered into

Section 304(ii) IPC r/w Section 135(i)(e) of the Electricity Act 2007.



6. The trial Court, appreciating the oral and documentary evidence, held that the prosecution has proved through PW-1, PW-2, PW-3 and PW-4 that the deceased Sanjeevi was found dead on the land of the accused and he had injuries indicating that he was electrocuted. Relying upon the observation mahazar (Ex.P2), rough sketch (Ex.P8) and M.O.1 and M.O.2 which are the forest wooden sticks of 9 numbers and binding iron wire of 2kg. The trial Court has come to the conclusion that the accused has planted groundnut crop in his land and to protect the same, he has made electric fence around his field using M.O.1 and M.O.2 and drawn electricity from his service illegally.

7. While the father of PW-1 crossed the field, without noticing the electric fence, got electrocuted and has sustained the following injuries:-

- “1.Brownish discoloration of skin over the Rt arm about 6x6cm
- 2.Brownish discoloration of skin over the Lt loin region extending to both buttocks.
- 3.Liner burnt Laceration about 7x1x1cm over the lateral aspect of Rt foot above the heel region.
- 4.Exit Wound 7x1x1cm and the Lt. calf region.”



8. The opinion of the post mortem Doctor examined as PW-8 that the death was occurred due to electrocution/cardiac arrest relied upon by the trial Court for acquitting the accused.

9. In the appeal, it is contended that the prosecution has failed to prove that the deceased died out of electrocution and the field of the accused was fenced with electric wire. The alleged recovery of M.O.1 and M.O.2 does not prove the charge that, with the help of 9 wooden sticks and binding wire, the electricity was drawn and electrified the fence. The Investigating Officer has not taken any photograph of the field either to show the field was electrically fenced or the deceased was found dead near the fence.

10. The learned counsel appearing for the appellant referring the sketch prepared by the Investigating Officer marked as Ex.P8 and the sketch annexed with the complaint given by the Tamil Nadu Electricity Board marked as Ex.P4 submitted that there was a vast difference in the sketch prepared by the Investigating Officer and the Junior Engineer of Tamil Nadu Electricity Board. PW-5, the Junior Engineer, TNEB, who prepared this sketch, which is annexed



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with his complaint (Ex.P4) had deposed that when he went to the field at 08.30 a.m. on 29.01.2015, the body of Sanjeevi was already removed and he did not see the body. When he prepared the sketch of the field, the electric fence was already removed. He did not take any photograph of the field and he has mentioned from where the electricity has been drawn, but he has not mentioned the distance between the point of supply and the point of fence and he has not measured the wire found in the field. Similarly, PW-10, Investigating Officer admitted that he has not taken the photograph of the field in his sketch, which is marked as Ex.P8 and he has not mentioned the point at which, the nine poles were pigged. He has admitted that in his observation mahazar, he has not mentioned the source of electricity from where it has been drawn to the land of the accused and has not taken the photograph of the field. He has also admitted that there is a difference between the sketch prepared by the Tamil Nadu Electricity Board (part of Ex.P4) and the sketch prepared by the Investigating Officer marked as Ex.P8. Therefore, the learned counsel appearing for the appellant submitted that having failed to prove that the deceased died out of electrocution and the electrical fence has been illegally put up by the accused. The trial Court erred in convicting the appellant.



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11. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the records.

12. On receipt of Ex.P1-complaint given by PW-1 at 10.00 hours the criminal law set into motion. The First Information Report, which is marked as Ex.P7 indicates that on 29.01.2015, PW-1 came to the station and informed about the death of his father and his suspicion against the accused Subramani Naidu. This complaint has been registered by PW-7[Mr.Manikandan] and investigation been taken up by PW-10 [Mr.P.Ramesh]. As per the testimony of PW-5, Junior Engineer attached to Tamil Nadu Electricity Board, has received information about the electric death of Sanjeevi at 08.00 a.m on 29.01.2015 and he went to the police station and reported about the illegal use of electricity by the accused. By the time, he went to spot at 08.30 a.m., but he did not see the body of the deceased. The body was already removed from the field. He has prepared sketch between 08.30 a.m. and 09.30 a.m and thereafter, he went to the police station and gave the complaint along with sketch, which is marked as Ex.P4. Whether his complaint was prior to the complaint Ex.P1 or subsequent to the complaint Ex.P1 not spoken



by any of the witnesses. Assuming that the earliest complaint was the one lodged by PW-1, how and by whom the body was removed before the arrival of PW-5, Junior Engineer, at 08.30 a.m is a question, which arises doubt about the case of the prosecution as spoken by the witnesses. The said doubt gets amplified, when PW-10 has said that after taking investigation, he went to the spot, prepared Ex.P8-rough sketch, conducted inquest and prepared the inquest report. PW-7[Grade-I Head Constable] has deposed that after registration of the complaint in Cr.No.26 of 2015 and on the instruction of the Inspector, he has taken the body of Sanjeevi to the Government Hospital and handed over to PW-8 [Dr.Manjupriya] for post mortem. In his cross examination, he had stated that he removed the body at 3.30 p.m in an open auto from Konasamudram Village and handed over to PW-8 the post mortem doctor, Government Hospital at Thiruttani. The post mortem was conducted on the next day i.e. on 30.01.2015 from 12.05 hours, as per the evidence of PW-8. In the post mortem report, the approximate time of death not mentioned. The exit wound and entry wound is not mentioned. The final opinion of the PW-8 is that, the death of Sanjeevi is due to electrocution/cardiac arrest.



13. In the Medical Jurisprudence and Toxicology by Modi, regarding electrocution death, it is specifically stated that a sketch/photograph should also been made by the Investigating Officer of the scene of the electrocution, in order to preserve on record, the spatial relationships of the victim, suspected tool, electric lines/connection and the victim's grounding contact. The clothing of the victim must be preserved as additional evidence.

14. In this case, no such endeavour has been taken by the Investigating Officer. The dress material not even been marked and the Investigating Officer has not taken photograph. The Junior Engineer of TNEB [PW-5], who claims has gone to the scene of occurrence and prepared the complaint and sketch marked as Ex.P4 also has not taken any photograph. He was the first official, who went to the scene of occurrence at 08.30 a.m.. As per his deposition, when he went there, he did not see the body of Sanjeevi. Whereas, as per the evidence of PW-7 Grade-I Constable, the body was removed only at 03.30 p.m., on 29.01.2015. If so, the testimony of PW-5 is totally false. If his evidence to be taken as proved, then the complaint given by him must have been the basis for registering the First Information Report. Either way the prosecution sketch Ex.P8 as well as the sketch (Ex.P4) of the



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Junior Engineer TNEB, PW-5 are not identical. The sketch fails to show the point or source of electricity used to electrify the fence. The absence of photograph makes the case of the prosecution highly unbelievable, because how the land of the accused was fenced and electrocuted with the help of M.O.1(9 numbers of wooden poles) and M.O.2- binding wire remains unexplained. To the witness, it has been suggested that the body of Sanjeevi, who died elsewhere has been stealthily drawn at the land of the accused and without proper investigation the police has implicated the accused by fabricating evidence. The contradictions pointed out about the presence of the body in the field of the accused; the failure to take photograph; and failure to indicate the source of electricity to electrify the fence, coupled with failure to establish (with the help of M.O 1 and M.O.2) that the field of the accused has been fenced and the said fence was electrified, all individually and put together creates doubt about the case of the prosecution that the deceased Sanjeevi died out of electrocution on the field of the accused while he tried to cross the land of the accused which was fenced with electric wire.

15. For the said reason, the benefit of doubt is extended to the accused. The trial Court erred in not appreciating the fact properly. The prosecution failure to



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prove the guilt beyond doubt and the vital contradiction and omission on the side of the prosecution regarding the electrical fence and the source of supply has been over looked by the trial Court which has lead to an erroneous judgment.

16. For the reasons stated above, **this Criminal Appeal is allowed.** The judgment of conviction passed by the learned Principal Sessions Judge, Thiruvallur in S.C.No.316 of 2016 dated 23.11.2020 is set aside. Fine amount, if any, paid by the accused shall be refunded to him. Bail bond, if any, executed by the accused shall stand cancelled. The appellant is set at liberty forthwith unless he is not connected with any other criminal case.

17.04.2023

Index:yes
speaking order/non speaking order
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To:

- 1.The Principal Sessions Court, Thiruvallur.
- 2.The Inspector of Police, Pothatturpet Police Station, Thiruvallur District.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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delivery judgment made in
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