



CRL A No.55 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	21.12.2022
Pronounced on	:	02.01.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.55 of 2020

Ellammal

...Appellant

Vs.

1.The Inspector of Police
Mailam Police Station
Villupuram District

2. Sengeni

3. Sekar

... Respondents

Prayer : Criminal Appeal filed under Sections 372 of Criminal Procedure Code, praying to set aside the Judgment in Spl.Case No.5 of 2018 passed by the learned Special Judge (Principal Sessions Judge) Villupuram Sessions Division, Villupuram dated 25.10.2019 and convict the respondents 2 & 3 respondents/accused by rendering exemplary punishment and also award victim compensation under Section 357(3) & 357(A) of Cr.P.C.

For Appellant :Mr.R.Thirumoorthy

For Respondents :Mr.R.Murthi

Government Advocate (Crl. Side) for R1
Mr.K.Govindan
Legal Aid Counsel for R2 and R3



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the Judgment in Spl.Case No.5 of 2018 passed by the learned Special Judge (Principal Sessions Judge) Villupuram Sessions Division, Villupuram dated 25.10.2019 and convict the accused/respondents 2 & 3 herein by rendering exemplary punishment and also award victim compensation under Section 357(3) & 357(A) of Cr.P.C.

2. The respondent police registered the case in Crime No.733 of 2017 initially against the 2nd respondent for offence punishable under Sections 379 and 304 IPC and during the course of investigation, the son of the 2nd respondent/3rd respondent herein was also arrested and the offences were altered into Section 304 IPC read with Section 135 (1) (a) of Electricity Act 2003 and after completing the investigation, the respondent police laid charge sheet before the Judicial Magistrate No.II, Tindivanam. The learned Magistrate taken the charge sheet on file in P.R.C.No. 18 of 2018 and after completing the formalities under Section 207 Cr.P.C., committed the case to the Special Judge (Principal Sessions



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Judge) Villupuram Sessions Division, Villupuram since the offences are exclusively triable by the Court of Session. The learned Principal Sessions Judge taken up the case on file in Spl.Case.No.5 of 2018 and after completing the formalities, framed the charges against the the accused/respondents 2 and 3 for offence under Section 135 (1) (a) of Indian Electricity Act and Section 304 (ii) IPC.

3. After framing the charges, in order to prove the case of the prosecution during trial, totally 10 witnesses were examined as P.W.1 to P.W.10 and 17 documents were marked as Exs.P.1 to P.17 besides 3 material objects were exhibited as M.O.1 to M.O.3.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence were produced.



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5. On conclusion of trial after hearing the arguments advanced on either side and also considering the materials, the learned Principal Sessions Judge not found the accused guilty for the offence punishable under Section 135(1) (a) of Indian Electricity Act and Section 304(ii) of IPC and thereby, acquitted them. Aggrieved over the said Judgment acquittal, the defacto complainant who is the wife of the deceased has filed the present appeal before this Court against the accused/respondents 2 and 3 herein.

6. The specific case of the prosecution is that the respondents 2 and 3 have been arrayed as A1 and A2 and they are father and son respectively. The 2nd respondent has owned a property of 3 acres in S.No.46/01. In the said land, the respondents 2 and 3 without getting permission from the Tamil Nadu Electricity Board, by using hooks, had diverted power supply and formed an electric fence illegally through Aluminium wire lines around their groundnut field in order to ensure that the wild boars get caught in the electric fencing knowing well that it may endanger to the human life. On 05.10.2017 at about 6 a.m., the husband of the defacto complainant had



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gone to his field and while coming through the field of the accused/respondents 2 and 3, he sustained electric shock from the electric fencing and died due to the effect of electric shock. Hence, the case was registered against the respondents 2 and 3 herein.

7. The learned counsel for the appellant/defacto complainant would submit that the deceased had got a land next to the land of the accused/respondents 2 and 3. On 05.10.2017, at about 6.00 a.m., the deceased had gone to his land. Thereafter, he did not return to home for a long time. Hence, the wife of the deceased suspected and searched for him hearand there and at last, on the next day i.e. 06.10.2017 at about 5 to 6 a.m., she found her husband dead by getting caught in the electric fencing in the land of the accused/respondents 2 and 3 herein. The accused/respondents 2 and 3 without getting permission or licence from the Tamil Nadu Electricity Board and without keeping any sign board of warning, by using hooks, had diverted power supply and connected to their wire fencing and therefore, the husband of the the appellant/defacto complainant, who came across the field of the accused/respondents 2 and



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3 got caught in the electric fencing and died due to electrocution. On seeing her husband's dead body, the wife of the deceased informed the same to her neighbors and subsequently, the Village Administrative Officer was informed and after his enquiry, complaint came to be lodged. The Village Administrative Officer/P.W.5 has deposed that on information, he along with the Village Assistant/P.W.6 went to the place of occurrence wherein, one Perumal was found dead due to electrocution and the accused had put up electric fencing illegally around their field by using hooks. P.W.6/Village Assistant also corroborated the evidence of the P.W.5/Village Administrative Officer. Even the Assistant Executive Engineer/P.W.7, TANGEDCO, Chendur, has clearly stated that on 06.10.2017 when he along with his Assistant Engineer, inspected the place of occurrence, they found materials which were used for laying electric fencing and in this regard he also lodged a complaint before the Mailam Police which was marked as Ex.P.7. and he also produced a rough sketch which was marked as Ex.P.8. The doctor who conducted post-mortem on the body of the deceased was examined as P.W.8 and he has given opinion that the deceased died due to electrocution and the post-



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mortem report along with the opinion of the doctor was marked as Ex.P.11.

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Therefore, the prosecution proved its case that the deceased died due to electric shock came through the electric fencing in the field of the accused/respondents 2 and 3. He would submit that since accused without obtaining any licence or permission took the electricity illegally from the main line by using hook and connected to their fence to safeguard their crops from wild animals, the accused/respondents 2 and 3 have committed offence under Section 135 (1) (a) of Indian Electricity Act. Further, due to the act of the accused/respondents 2 and 3, the husband of the defacto complainant died and therefore, they have also committed offence under Section 304(ii) IPC. He would further submit that the wife of the deceased is the defacto complainant and she was examined as P.W.1 and she is the one who saw her husband's dead body. She has clearly stated that she was searching for her husband everywhere and at last she found her husband dead by getting caught in the electric fencing in the field of the accused/respondents 2 and 3. Further, the evidence of P.W.1 was corroborated by the evidence of the P.W.5, P.W.6, P.W.7, P.W.8 and medical evidence/Post Mortem report/Ex.P.11 that the deceased died due



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to electric shock came from the fencing in the field of the accused/respondents 2 and 3. However, the trial Court failed to appreciate the evidence of the prosecution witnesses and erroneously acquitted the accused/respondents 2nd and 3 which warrants interference.

8. Though notice was served on the respondents 2 and 3, when the matter came before this Court on 08.12.2022, none appeared on behalf of the respondents 2 and 3 and therefore, this Court had cancelled the Vakalat filed by counsel for the respondents 2 and 3 and directed Registry to appoint a competent legal Aid Counsel for arguing the matter on behalf of the respondents 2 and 3.

9. On 21.12.2022, when the matter came up before this Court Mr.K.Govindan, Legal Aid Counsel appeared on behalf of the respondents 2 and 3 and argued the matter. He would submit that there is no eyewitness to this case and all the witnesses are hearsay witnesses. Further there is no material to show that the respondents 2 and 3 took electricity illegally by using hooks and connected to their wire fence. Further, the



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Village Administrative Officer/P.W.5 also only on assumption and conjunction has stated that the deceased died due to the effect of electric shock. Even the Assistant Executive Engineer/P.W.7 has clearly stated that no complaint was received in the Electricity Department regarding theft of electricity by using hooks. Therefore, the prosecution has not established its case that the deceased died due to electric shock came from the fence of the respondents 2 and 3. Therefore, the trial Court rightly extended the benefit of doubt in favour of the respondents 2 and 3 and acquitted them. Hence there is no merit in the appeal and the appeal is liable to be dismissed.

10. The learned Government Advocate (Crl. Side) appearing for the 1st respondent police would submit that the respondents 2 and 3 had deviated the electricity from its usual line and by using hooks gave connection to their wire fencing which was put up by them to prevent wild animals from damaging their crops. On the date of occurrence, when the deceased came through the land of the accused/respondents 2 and 3, he sustained electric shock and died due to the effect of electric shock. Since,



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the deceased did not return to home for the whole day, the wife of the deceased went in search for the deceased everywhere and on the next day morning, she found the deceased died near the fencing in the land of the accused/respondents 2 and 3. Thereafter, she informed the same to her neighbours and villagers and subsequently, the Village Administrative Officer/P.W.5 and Village Assistant/P.W.6 went to the place of occurrence and made enquiry and they informed to the police. Further in order to prove the electricity deviation, P.W.7 who is the Assistant Executive Engineer of TANGEDCO, inspected the place of occurrence along with his Assistant Engineer and confirmed that there were materials and system for being put up electric fencing. Further, the Post-mortem report/Ex.P.11 issued by the doctor/P.W.8 confirmed that the cause of death was due to electric shock. However, the trial Court not found the guilt of the accused /respondents 2 and 3 and acquitted them.

11. Heard the learned counsel appearing for the appellant, learned Legal Aid Counsel for the respondents 2 and 3 and learned Government



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Advocate appearing for the 1st respondent police and also perused the materials available on record.

12. In order to substantiate the charges on the side of the prosecution, totally 10 witnesses were examined and 17 documents were marked and in addition to that, 3 Material Objects were exhibited.

13. Out of the 10 witnesses, the wife of the deceased who lodged the complaint was examined as P.W.1 and she has clearly deposed that they have got a land adjacent to the land of the accused/ respondents 2 and 3 and they could reach their land through the land of the accused/respondents 2 and 3. On the the date of occurrence, her husband who had gone to their field, did not return home for a long time and hence, she searched for him in and around the places and at last on the next day morning, she found the dead body of her husband who died by getting caught in the electric fencing in the field of the accused/respondents 2 and 3. Immediately she informed the same to her neighbours and villagers and



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subsequently, the Village Administrative Officer came to the place of occurrence and conducted enquiry and informed to the police.

14. P.W.2 is the son of the deceased and he has spoken about hearing of the incident and subsequently, sending complaint to the Superintendent of Police, Villupuram, to include the name of the 3rd respondent herein in the FIR.

15. P.W.5 is the Village Administrative Officer and he has clearly spoken that on 06.10.2017 at about 6.30 p.m. he heard that one Perumal died in the land of one Sengeni and hence, he along with his Village Assistant/P.W.6 went to the occurrence place and found the said Perumal died due to the effect of electric shock. He has further deposed that the said Sengeni/2nd respondent herein had cultivated groundnut (Peanut) crops in his field and had illegally put up electric fencing around his field by using hooks to safeguard the crops from the wild boars and they seized 2 nos. of 15 feet of Casuarina Sticks and electric fencing from the field of the accused and produced before the police.



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16. P.W.6 is the Village Assistant and he is the one who informed to the Village Administrative Officer/P.W.5 about the incident he heard from the villagers and he has also corroborated the evidence of the Village Administrative Officer/P.W.5.

17. P.W.7 is the Assistant Executive Engineer, TANGEDCO, Chendur, and he has deposed that on 06.10.2017, when he was on duty, he received information through his Assistant Engineer that one Sengeni had laid electric fencing in his land and hence, he along with his Assistant Engineer inspected the said place and found materials which were used for laying electric fencing and subsequently, gave complaint to the Mailam Police which was marked as Ex.P.7 and also produced rough sketch which was marked as Ex.P.8.

18. P.W.8 is the doctor who conducted post-mortem on the body of the deceased and he has clearly spoken about the nature of wounds sustained by the deceased and given opinion that the deceased died due to



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the effect of electric shock and the opinion of the doctor was marked as

Ex.P.11.

19. On a perusal of the evidence of P.W.1/the wife of the deceased shows that she is the one who had first seen the body of the deceased at the field of the accused/respondents 2 and 3. From the evidence of P.W.7/Assistant Executive Engineer, it is proved that there were materials and system found in the field of the accused where were used to lay electric fencing. P.W.5/ Village Administrative Officer and P.W.6/Village Assistant have clearly deposed that the accused/respondents 2 and 3 had illegally put up electric fencing around their field by using hooks to safeguard their crops from the wild boars and they had also seized 2 nos. of 15 feet of Casuarina Sticks and electric fencing and produced before the police. The opinion of the Doctor clearly shows that the cause of death was due to the effect of electric shock. Therefore, from the evidence of P.W.1, P.W.5, P.W.6, P.W.7, P.W.8 and medical evidence viz., Ex.P.11, the prosecution proved its case that the deceased died due to electric shock from the fence in the field of the accused/respondents 2 and 3.



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20. This Court being an Appellate Court as a final Court of fact finding, while re-appreciating the entire evidence finds that the accused/respondents 2 and 3 had not obtained license or permission to put electric fencing and without obtaining permission or licence from the concerned authority, committed theft of electricity by using hooks and connected it to their wire fencing and therefore, they have committed offence under Section 135 (1) (a) of Tamil Nadu Electricity Act. Further, they accused/respondents 2 and 3 knowing well that using electricity into the fencing illegally without knowing anyone, may cause death if anyone passes through the same. The private respondents/A1 and A2 had put up electric fencing illegally due to which, the husband of the defacto complainant died due to electric shock. Therefore, the accused/respondents 2 and 3 have also committed offence under Section 304(ii) IPC. Even though it is not a culpable homicide amounting to a murder under Section 299 IPC punishable under Section 302 IPC, the act of the accused / respondent 2 and 3 falls under Section 300 (4) IPC culpable homicide not amounting to murder punishable under Section



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304(ii) IPC. For better understanding Sections 300(4) and 304(ii) IPC are extracted hereunder;

Section 300 (4) IPC reads as follows;

4thly- 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 as aforesaid.

Section 304(ii) IPC reads as follows;

“with imprisonment of either description for a term which may extend to 10 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”

21. This Court finds that the accused/respondents 2 and 3 have committed offences as stated above and therefore, they are convicted for



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the offence punishable under Section 135 (1) (a) of Indian Electricity Act and Section 304(ii) IPC.

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22. Accordingly, this Criminal Appeal is allowed.

23. For a reversal judgment, before imposing sentence, the accused have to be heard. Hence, the respondents 2 and 3 are directed to be appear before this Court on 06.01.2023“**for hearing on the question of sentence**”.

24. Mr.K.Govindan, Legal Aid Counsel appeared on behalf of the respondents 2 and 3 is entitled for remuneration as per rule.



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25. List the matter on 06.01.2023 “for hearing on the question of sentence”.

**02.01.2023
(½)**

ksa-2

Index: Yes/No

Note: Issue Order Copy on 06.01.2023



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1. The Special Judge (Principal Sessions Judge) Villupuram Sessions Division, Villupuram
2. The Inspector of Police
Mailam Police Station
Villupuram District
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.55 of 2020**

02.01.2023



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P.VELMURUGAN,J.

Today, when the matter is taken up for hearing on the question of sentence, respondents 2 and 3/accused 1 and 2 appeared before this Court. They have been questioned regarding the sentence to be imposed on them. They have stated that they never committed the offence as projected by the prosecution.

2. Second respondent herein is the owner of the land. Though he is an aged person, the material evidence shows that without getting permission from the Tamil Nadu Electricity Board, by using hooks, he had diverted the electricity power supply and formed an electric fence illegally around his groundnut field. While coming through the field of respondents 2 and 3/accused 1 and 2, the deceased died due to electric shock. Admittedly, the body of the deceased was recovered from the land of the second respondent herein/Accused No.1. Second accused is the son of the first accused, who is working as a conductor in the Tamil Nadu Transport Corporation. He stated that he was away from the land and he



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was not aware of the incident. Both the accused have stated that they have not committed the offence as alleged by the prosecution.

3. Learned counsel for the second and third respondents/Accused No.1 and 2 would submit that the second respondent is an aged person and he is not able to hear. Third respondent is working as conductor in the Tamil Nadu Transport Corporation. He is neither residing in the village nor doing any agricultural work for the past five years. They are not aware as to how hooks were used to divert the electricity to the wire fence and also no revenue record with regard to the survey number of the land has been produced. Revenue authority has not stated that the said land belongs to the respondents. The accused have not committed any offence as alleged by the prosecution.

4. Heard and perused the materials available on record.

5. This Court has already given reasons elaborately that at the relevant point of time, in order to safeguard the peanut crops existing in



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the land of the first accused from the wild animals, the accused put an electric fence and when the deceased passed through the land of the first accused, due to the electric shock, the deceased died. Post-mortem report and evidence of the Executive Engineer from Electricity Board clearly show that there was a possibility of diverting the electricity from the electricity line to the wire fence and the cause of death is due to electric shock. Admittedly, body of the deceased was recovered from the field of the accused/respondents 2 and 3. Mere non-mentioning of the survey number of the land, cannot be a ground to disbelieve the evidence of the prosecution. Therefore, the contention of learned counsel for the respondents 2 and 3 is rejected. The first accused is the owner of the land and he is an aged person. He might have engaged a person to divert electricity from the electric line to the wire fence.

6. Considering the fact that the body of the deceased was recovered from the land of the first accused and the evidence of the Engineer from the Electricity Board that there is a possibility of diversion of the electricity from the electric line to the wire fence, the respondents/accused



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are convicted for the offence under Sections 135(1)(a) of the Indian Electricity Act and Section 304(ii) IPC.

7. Considering the above facts and circumstances, for the offence under Section 135(1)(a) of Indian Electricity Act, the first accused is directed to pay fine of Rs.50,000/- and in default, he has to undergo three months rigorous imprisonment. The second accused is directed to pay fine of Rs.25,000/- and in default, he has to undergo three months rigorous imprisonment for the offence under Section 135(1)(a) of the Indian Electricity Act.

8. Further, for the offence under Section 304(ii) of IPC, the first accused is directed to pay fine of Rs.50,000/- and in default, he has to undergo three months rigorous imprisonment. The second accused is also directed to pay fine of Rs.25,000/- and in default, he has to undergo three months rigorous imprisonment for the offence under Section 304(ii) IPC. The accused shall deposit the aforesaid fine amount before the Registry of this Court. The abovesaid fine amount shall be converted into



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compensation under Section 357 Cr.P.C., and the same shall be
disbursed to the wife of the deceased.

06.01.2023
(2/2)

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Note:

Registry is directed to issue copy of the judgment by today itself **(i.e, on 06.01.2023).**

Copy to:

The Registrar,
Accounts Section,
High Court, Madras.



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P.VELMURUGAN,J.

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06.01.2023