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Crl.A.No.675 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.675 of 2016

1. Desan (Died)
2. Smt.Kumari
3.Gurrappan @ Guruvappan (Died) ...Appellant

vs.

State rep. by
The Inspector of Police,
D-5, Pallipet Police Station,
Tiruvallur District. ...Respondent
(Crime No.83 of 2011)

(Crl.A.No.675/2016 is abated in respect of the first appellant as per order dated 15.06.2023)

(Crl.A.No.675/2016 is abated in respect of the third appellant as per order dated 26.04.2023)

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973, against the judgment and orders dated 31.08.2016 passed by the Principal District and Sessions Judge, Tiruvallur, in S.C.No.260 of 2014.

For Second Appellant : Mr.Agilesh Kumar. S
For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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JUDGMENT

Challenging the conviction and sentence dated 31.08.2016 passed by the Principal District and Sessions Judge, Tiruvallur, in S.C.No.260 of 2014, the present Criminal Appeal is filed.

2. The appellants stood charged for the offences punishable under Sections 135(1)(e), 136(1)(a) of the Indian Electricity Act, 2003 and 304(ii) r/w.109 IPC, in S.C.No.260 of 2014.

3. The learned trial court Judge, after full trial, convicted and sentenced the appellants, vide his judgment dated 31.08.2016, as detailed hereunder.

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1 to A3	Section 135(1) (e) and 136(1) (a) of the Indian Electricity Act	Rigorous Imprisonment for three years
	Section 304(2) IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.500, in default, to undergo Rigorous imprisonment for six months
A3	Section 304(2) r/w. Section 109 IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.500,



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<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
		in default, to undergo Rigorous imprisonment for six months.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.		

4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

4.1. The deceased Manikandan is a resident of Kannigapuram Village. The case of the prosecution is that on the night of 24.04.2011, the deceased Manikandan was returning home through the lands belonging to the appellants in survey number 395/18B of Kannigapuram Village. Since a live fence was put up by the appellants around their properties, in order to protect crops from wild boars, Manikandan while crossing the field got electrocuted and died.

4.2. Tmt.Dhamayandhi (P.W.1), the then Village Administrative Officer, Pallipattu Village received an intimation from the general public on 25.04.2011 that a body was found in survey number 395/18B of Kannigapuram Village. She went to the place of occurrence and found the body of the deceased.



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WEB COPY 4.3. Thiru.Palani (P.W.4), the then Panchayat President of Perumanallur Village and Thiru.A.L.Baskar (P.W.7), the then Executive Engineer of Tamilnadu Electricity Board, Tiruttani, also went to the scene of occurrence.

4.4. Thiru.A.L.Baskar (P.W.7) found the live fence around the land in survey number 395/18B. According to him, electricity was supplied to the fence by using a hook to connect the low tension wire passing through the land. He removed the hook with the help of his assistant.

4.5. Thiru. Narasimman (P.W.10), took photographs (M.O.1) of the place of occurrence and the body of the deceased. The C.D. was marked as M.O.2.

4.6. Tmt.Dhamayandhi (P.W.1) lodged a complaint (Ex.P1) with Thiru.Mani (P.W.13), the then Special Sub Inspector of Police, B6, Kolathur Police Station, who in turn registered FIR (Ex.P10) in Crime No.83/2011 against the appellants for the offences punishable under Sections 304 IPC r/w.135(1)(e) and 136(1)(a) of the Electricity Act. He



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then placed the records before Thiru.Hanumandhan (P.W.14), the then Inspector of Police, B6, Kolathur Police Station, for investigation.

4.7. P.W.14 took up investigation in Crime No.83/2011, went to the scene of occurrence, prepared an observation mahazar (Ex.P11) and a rough sketch (Ex.P12) in the presence of the witnesses Jayaraman (P.W.5) and Venu (P.W.6). He conducted inquest (Ex.P13) on the body of the deceased between 04.00 p.m. to 05.00 p.m. on 25.04.2011 in the presence of panchayatdharas. Thereafter, he sent the body to the Government Hospital, Tiruttani through Thiru.Venkatesan (P.W.12), the then Head Constable of Police, Kolathur Police Station.

4.8.Palani (P.W.2) brother of the deceased, Rose Reddy (P.W.3) father of the deceased, Jayaraman (P.W.5), Venu (P.W.6), Siranjeevi (P.W.8) and Velu (P.W.9), did not support the case of the prosecution and they were treated hostile.

4.9. Dr.Anitha Ponmalar (P.W.11), Medical Officer attached to Government Hospital, Tiruttani, conducted autopsy on the body of the deceased on 24.04.2011 and recorded the following :



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- (a) An abrasion wound measuring 5 x 2 x 1 cm was found on the right big toe.
- (b) An abrasion wound measuring 1 x 05 x 2 cm was found on the left side of the neck.
- (c) A big blister measuring 6 x 5 cm was found on the right side of hte lower abdomen.

In the opinion of the doctor, the deceased appeared to have died due to electric shock.

4.10. Thiru.Hanumandhan (P.W.14), arrested the appellants 1 and 2 near Bothattur Road and recorded their confession statements in the presence of the witnesses Siranjeevi (P.W.8) and Velu (P.W.9). Based on their confession, he recovered 200 meter long iron wire (M.O.3), 1½ feet long wooden sticks (30 numbers) (M.O.4), 6 meter long yellow colour aluminium wire (M.O.5) in a bush near a canal in Kannigapuram Village. He recorded the statement of the witnesses and after completing investigation laid a final report before the Principal Sessions Judge, Thiruvallur in S.C.No.260/2014.



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4.11. The learned Principal Sessions Judge after furnishing copies of records to the accused under Section 207 Cr.P.C, framed charges against the accused as stated in Paragraph No.2.

4.12. In order to bring home the guilt of the accused the prosecution examined 14 witnesses, marked 15 documents and 5 Material Objects.

4.13. The accused when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. However, they did not examine any witness on their side.

4.14. The learned Principal Sessions Judge, after analysing the oral and documentary evidence on record, convicted and sentenced the appellant as stated in Paragraph No.3 vide judgment and orders dated 31.08.2016, aggrieved over which, the appellants have preferred the present appeal.



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4.15. During the pendency of the present appeal, the appellants 1 and 3 died and therefore, the charges against them got abated.

5. Heard Mr.Agilesh Kumar.S, learned counsel appearing for the second appellant and Mr.S.Raja Kumar, learned Additional Public Prosecutor for the respondent.

6. Mr.S.Agilesh Kumar, learned counsel appearing for the second appellant contended that

- i. since the mahazar witnesses turned hostile to the prosecution, seizure of M.O.3 to M.O.5 has not been proved by the prosecution;
- ii. when it is contended by P.W.7 that he saw a live fence surrounding the land of the appellants M.O.3 to M.O.5 were recovered from a far of place ;
- iii. the Doctor who conducted autopsy on the body of the deceased had stated that autopsy was done on 24.04.2011 ;
- iv. in the inquest report (Ex.P13), the date 24.04.2011 was corrected in some places as 25.04.2011 and therefore, the case of the



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prosecution is highly doubtful.

Thus, according to the counsel for the appellants, the conviction and sentence passed by the trial court is to be set aside.

7. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

8. The case of the prosecution, in the instant case, is not free from infirmities as detailed hereunder :

- According to the prosecution, the death had occurred on the night of 24.04.2011 and the body was recovered on 25.04.2011 at about 01.30 p.m.
- Autopsy on the body of the deceased was done on 26.04.2011 as per postmortem certificate (Ex.P9).
- Dr.Anitha Ponmalar (P.W.11), in her deposition had stated that she conducted autopsy on the body of the deceased on 24.04.2011. Her evidence was based on the internal hospital records. In the



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postmortem certificate (Ex.P9), the cause of death was indicated as 'electric shock' and this was inserted subsequently, by a different person and in a different ink.

- P.W.11 could not also find any identification marks since the body was completely decomposed. This suggests that the victim should have died atleast 2 to 3 days prior to 24.04.2011.
- In the inquest report (Ex.P13), the date 24.04.2011 was altered to 25.04.2011 in some places. In fact in column number 9 and column number 26, the date '24.04.2011' remains unaltered. In column number 26, it has been written by the Inspector of Police thus :

“பிரேத விசாரணை 24.04.2011 ஆம் தேதி 16.00 மணிக்கு ஆரம்பித்து 17.00 மணிக்கு முடிக்கப்பட்டது.”

- This cannot be simply brushed aside as an error because the date 24.04.2011 is mentioned both in inquest report and postmortem certificate.
- The prosecution has not explained the length and breadth of the fence. The rough sketch (Ex.P12) does not mention this.
- The learned Additional Public Prosecutor (Crl. Side) though contended that at the time of recovery of the body from the land of



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the appellants, the live fence was already removed and therefore, the same was not shown in the rough sketch. However, the prosecution should have demonstrated how the fence was put up in the lands. When a specific question was posed to the prosecution in this regard, the Additional Public Prosecutor (Crl. Side) contended that the fence was put up covering the entire land of the appellants. The body of the deceased was found in the middle of the land of the appellants.

- It has not been clearly stated by the prosecution from which point the deceased could have entered the land of the appellants to reach his village.
- The Executive Engineer (P.W.7) did not state whether any separate proceedings were initiated against the appellants for theft of electrical energy from the low tension wire.
- According to the prosecution, the entire live fence was dismantled and thrown as garbage by the appellants in order to mislead the police and the same was recovered and marked as M.O.3 to M.O.5. There is no other evidence that there was an existing live fence around the said land and that the accident occurred when the victim scaled it.



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- The recovery of M.O.3 to M.O.5 were not also proved by prosecution as the witness to the mahazar turned hostile.
- Moreover, it is not clear as to how M.O.3 to M.O.5 would be adequate to cover the entire area which reportedly was fenced with electric connection.
- It is to be pointed out that Thiru.Baskar (P.W.7), Executive Engineer of Tamilnadu Electricity Board in his evidence had stated that he saw the live fence surrounding the properties of the appellants in Survey number 395/18B and he removed the same with the help of the workmen of the electricity board.

Thus, the prosecution has not proved its case beyond reasonable doubts against the appellants. Therefore, the benefit of doubt naturally goes to the appellants.

9. In the result,

- i. The Criminal Appeal is allowed.
- ii. The judgment and orders dated 31.08.2016 passed by the Principal District and Sessions Judge, Tiruvallur, in S.C.No.260 of 2014, is



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set aside.

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iii. The second appellant (accused in S.C.No.260 of 2014) is acquitted from all the offences, of which she is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

15.07.2024

Index : yes/no
Speaking /Non speaking Order
mtl



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To

1. The Inspector of Police, D-5, Pallipet Police Station, Tiruvallur District. (Crime No.83 of 2011)
2. The Principal District and Sessions Judge, Tiruvallur.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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