

(2010) 01 MAD CK 0068
In the Madras High Court
Case No : Criminal A. No. 1813 of 2002

Subramaniam @ Seethan

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Electricity Act, 1910 — Section 39
Penal Code, 1860 (IPC) — Section 304

Citation : (2010) 01 MAD CK 0068

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : N.R. Ramesh Kanna, for the Appellant; I. Paul Noble Devakumar, Government Advocate (Crl. Side), for the Respondent

Judgement

R. Mala, J.—The Criminal Appeal arises out of the judgment of conviction and sentence imposed on the appellant-accused in S.C. No. 339

of 2002, dated 29.11.2002 on the file of the Additional District and Sessions Court (Fast Track Court No. 2), Coimbatore. The appellant-

accused was convicted for the offence u/s 304 (Part-2) IPC and sentenced to undergo rigorous imprisonment for five years and also convicted for

the offence u/s 39 of the Indian Electricity Act and sentenced to undergo rigorous imprisonment for two years.

2. The case of the prosecution is as follows:

(a) On 31.1.2001 at about 5.30 p.m., the deceased Chinnadurai, P.W.1 Muthusamy and P.W.2 Arumugham went for fishing at a pond and since

they did not get any fish, they returned home through the property belonging to one Thayammal, who is the mother of P.W.8 Manavalan. The

appellant-accused took the said property on lease and enjoying the property as a

lessee. While they were returning through the sugarcane field, the deceased Chinnadurai got electrocuted and he died on the spot itself. P.Ws.1 and 2 sustained electric shock.

(b) Immediately, P.W.3 Andavan came to know about this incident and he took P.Ws.1 and 2 to hospital, where P.W.14 Dr. Padmarajan treated them and gave Ex.P-9 wound certificate in respect of P.W.1 and Ex.P-10 wound certificate in respect of P.W.2.

(c) P.W.12 Kuppusamy, Sub-Inspector of Police, received the information and went to hospital and recorded the complaint from P.W.1, which is Ex.P-5 and returned to the Police Station and registered a case in Cr. No. 11 of 2001 u/s 304 (Part-2) IPC read with Section 39 of the Indian Electricity Act and prepared Ex.P-6 printed F.I.R.

(d) P.W.13 Inspector of Police went to the place of occurrence and since it was night time and dark, he made arrangements for safeguarding the dead body and on the very next day morning, he went to the place of occurrence and prepared Ex.P-1 observation mahazar in the presence of P.W.5 Kaliappan, the Village Administrative Officer. He also seized the material objects M.Os.1 to 5 under Ex.P-2 seizure mahazar. He also drew Ex.P-7 rough sketch.

(e) P.W.13 Inspector of Police conducted inquest in the presence of villagers and panchayatdars and prepared Ex.P-8 inquest report. He also took steps for taking photographs through P.W.7 Sivan, who took M.O.6 photographs. After inquest, P.W.13 Inspector of Police sent the body for autopsy through requisition.

(f) P.W.6 Dr. Mariammal received the dead body along with the requisition and she conducted autopsy and issued Ex.P-3 post-mortem certificate, in which the following injuries were noted:

External:

Rigor mortis present. Frothy discharge from nose present. Tongue inside. Jaws closed, pupils dilated and fixed, teeth

8 | 8

8 | 8

Wire Mark

1. 7 cm thigh }
2. 5 cm left leg }
3. 5 cm right leg

Internal:

No fracture Hyoid Bone.

Thorax Normal.

Heart clotted fluid seen Right Chamber.

Lungs Right 500 gms. Lt. 450 gms congested.

Liver congested, Kidney congested.

Spleen congested, Bladder empty.

Intestine--distended with gas.

Wound of wire current in flow and exit present. Left thigh and in left leg. Right leg also wire mark seen.

Brain congested. Normal weight, skull spinal column no fracture.

Impression: The deceased would have died 16-20 hours prior to post-mortem. Death due to electric shock.

(g) P.W.13 Inspector of Police examined the witnesses--P.W.1 Muthusamy, P.W.2 Arumugham, P.W.3 Andavan, P.W.4 Mariammal, who is the

wife of the deceased Chinnadurai, P.W.5 Kaliappan and others and recorded their statements. He also examined the owner of the property,

namely Thayammal and her son P.W.8 Manavalan and seized the xerox copy of the lease deed--Ex.P-4 in respect of the lease entered into

between the appellant-accused and Thayammal.

(h) P.W.10 Junior Engineer of the T.N.E.B. came to know about the incident and went to the place of occurrence. Then, he came to know that

the investigation has been started. He intimated the fact to P.W.11 Arumugham, Assistant Executive Engineer of the T.N.E.B.

(i) P.W.11 Assistant Executive Engineer took steps for prosecuting Thayammal, the owner of the property, who in turn paid the fine amount, and

the receipt for the same has been marked as Ex.P-11.

(j) P.W.13 Inspector of Police also examined the other witnesses and concluded the investigation. He filed charge sheet against the appellant-

accused under Sections 304 (Part-2) IPC read with Section 39 of the Indian

Electricity Act.

3. After examination of the witnesses, the learned Sessions Judge, questioned the accused u/s 313 Cr.P.C. and placed the incriminating materials.

The appellant-accused denied the occurrence in toto. After considering the evidence of P.Ws.1 to 14, Exs.P-1 to P-11 and M.Os.1 to 6, the trial

Court came to the conclusion that the appellant-accused is guilty of the offence u/s 304 (Part-2) IPC and Section 39 of the Indian Electricity Act

and convicted and sentenced him as indicated above. Against that, the present Criminal Appeal has been filed.

4. Challenging the said conviction and sentence passed by the trial Court, learned Counsel for the appellant-accused would contend that it is true

that the death of the deceased Chinnadurai was due to electrocution, which was confirmed by P.W.6 Dr. Mariammal as per Ex.P-3 post-mortem

certificate. But there is no evidence to show that the appellant-accused has committed the theft of energy and he put up the electric fencing, which

lead to the death of the deceased Chinnadurai. He further submitted that the alleged injured eye-witnesses, namely P.Ws.1 and 2 turned hostile.

Even P.W.4, the wife of the deceased turned hostile. So, there is no evidence to fasten the liability on the appellant-accused. Learned Counsel for

the appellant-accused further submitted that admittedly, the property where the occurrence took place, absolutely belongs to the said Thayammal,

but she was not examined before the Court, but her son P.W.8 alone was examined. The document, namely Ex.P-4 lease deed is not the original

document. It is only xerox copy, which is not admissible in evidence. He further contended that after the incident, Thayammal, the owner of the

property has been prosecuted and she has also paid the fine amount as per Ex.P-11 receipt for payment of fine. Hence, the offences against the

appellant-accused are not made out. The trial Court has not considered these facts in proper perspective and convicted and sentenced the

appellant-accused, which is against law. He prayed for acquittal of the accused.

5. Per contra, learned Government Advocate (Criminal Side) fairly conceded that P.Ws.1 and 2 turned hostile. The occurrence has taken place in

the property of Thayammal and the appellant-accused is having leasehold right on the property and thus, he is a lessee and cultivating the land,

which has been proved by way of examining P.W.8 Manavalan, who is the son of

Thayammal and P.W.9 Rathnavel who was one of the attestors

to Ex.P-4 lease deed. Their evidence clearly prove that on the date of occurrence, the appellant-accused has been cultivating the property as a

lessee. So, the trial Court has considered these aspects in proper perspective and came to the correct conclusion. There is no infirmity or illegality

in the judgment of conviction and sentence passed by the trial Court. He prayed for dismissal of the Criminal Appeal.

6. It is true that to prove the case of the prosecution, before the trial Court, P.Ws.1 to 14 were examined, Exs.P-1 to P-11 were marked and

M.Os.1 to 6 were produced. P.Ws.1 and 2 who are the injured eye-witnesses, turned hostile. P.W.4 Mariammal, the wife of the deceased

Chinnadurai, also turned hostile. The admitted fact is that the deceased Chinnadurai died due to electrocution. That has been proved by P.W.6 Dr.

Mariammal, who issued Ex.P-6 post-mortem certificate. It is also proved that the property in question is situated in Pappanakulam Village,

Udumalpet Taluk in S. Nos. 166/A3, 168, 166/A1, 169/1-A, 169/3A and 164, which belongs to Thayammal. She was prosecuted for electricity

theft and she paid the fine amount as per Ex.P-11 receipt for payment of fine. At the time of investigation, M.Os.1 to 5 were seized from the place

of occurrence, which was used for committing theft of energy and to prevent the damages from the wild boars/pigs, they had put up the electric

fencing.

7. So, the only question to be decided is whether the accused has committed theft of energy and put up the electric fencing near the sugarcane

crops in the property, which led to the death of the deceased Chinnadurai.

8. In such circumstances, it is the duty cast upon the Court to decide whether the accused was a lessee of the property in question or he is only a

coolie. Learned Counsel for the appellant-accused mainly focused his argument that the accused is only a coolie working under Thayammal and he

is not a lessee and that he is innocent, but the original of Ex.P-4 lease deed has not been filed before Court and hence, he prayed for acquittal.

9. Per contra, learned Government Advocate would contend that the appellant-accused is a lessee and the xerox copy of the lease deed has been

marked as Ex.P-4 through the son of Thayammal, the owner of the property and that Ex.P-4 lease deed has also been proved by examining one of

the attestors to the document, namely P.W.9 Rathnavel, and these facts clearly proved that the appellant-accused is cultivating the land only as a

lessee. So, it is proper on the part of the Court to consider the oral evidence of both P.Ws.8 and 9.

10. While considering the evidence of P.W.8 Manavalan, in his chief examination, he has stated that from 1997 onwards, his mother was doing

personally land cultivation with the help of the accused, who was paid monthly salary, that on 29.3.2000, the lease agreement was entered into

between the accused and the said Thayammal, for two years and at the time of the incident, the accused was a lessee under his mother. In his

cross-examination, only one suggestion has been posed that he is not a lessee, to which, he denied. Except that, no other question has been posed

to him and no document has been produced to him.

11. P.W.9 Rathnavel was examined to prove Ex.P-4 lease deed. In Ex.P-4, P.W.9 was one of the attestors. In his chief examination, he has

stated that he is one of the attestors of the said document, Ex.P-4. He further stated that one Balasubramani was the scribe of the document. In his

cross-examination, he fairly conceded that the lease deed is not registered, but it was for two years. A suggestion was posed to him that the

document has been concocted and fabricated for the purpose of the case after the incident, which suggestion has been denied by him.

12. While perusing the xerox copy of the lease deed, namely Ex.P-4, it is seen that the stamp paper(s) had been purchased on 29.3.2000 and it

has been executed on the same day. But admittedly, at the time of attesting the document, the date has not been mentioned. At this juncture,

learned Counsel for the appellant would contend that since the property belongs to Thayammal, who is the wife of Tahsildar, the document has

been concocted for the purpose of the case. But I do not find any force in the argument, because, while perusing Ex.P-4, even though it is a xerox

copy, from which, it could be seen that the stamp paper(s) had been purchased on 29.3.2000 and it was executed on the same day. If really it was

concocted after the incident, the appellant-accused knows the consequences of the same. So, the argument advanced by learned Counsel for the

appellant that Ex.P-4 has been concocted after the incident took place, does not merit acceptance.

13. Learned Counsel for the appellant would further contend that Ex.P-4 lease deed is only xerox copy and hence, it is not admissible in evidence.

But this argument also does not hold good, because, in the criminal cases, we are not deciding the rights of the parties. So, the admissibility of the document will not arise in the present case.

14. Hence, I am forced to come to the conclusion that on the date of incident, the appellant-accused is a lessee under the said Thayammal and he alone was cultivating the land(s). Merely because Thayammal paid the fine amount, it will not exonerate the charges against the appellant-accused, because Service Connection stands in the name of the owner Thayammal and she was also prosecuted for theft of energy and she has also paid the fine amount.

15. Even at the time of questioning u/s 313 Cr.P.C., the appellant-accused has stated that he was doing only coolie work and he has stated that he does not know as to who put the electric fencing. Even though he has stated that he was going to examine the witnesses, he has not placed any witnesses or documents before the Court to show that he is not cultivating the land.

16. Furthermore, at the time of arguments, learned Counsel for the appellant-accused would contend that there is no direct evidence to show that the appellant-accused has put up the electric fencing in between the channel and hence, he prayed for acquittal of the accused by giving benefit of doubt to the appellant-accused.

17. Admittedly, as per the evidence of P.W.5 Kaliappan, the Village Administrative Officer, M.Os.1 to 5 which were used for putting up the electric fencing, have been seized. Moreover, as already discussed, the appellant-accused was a lessee. Hence, I am forced to conclude that the appellant-accused has put up the electric fencing by taking the wire through the channel, which lead to the death of the deceased Chinnadurai.

18. Furthermore, without obtaining any licence or permission from the Tamil Nadu Electricity Board, the appellant-accused used electricity for putting up the electric fencing and so, he is guilty of the offence u/s 39 of the Indian Electricity Act, which has been proved by the prosecution beyond reasonable doubt.

19. The trial Court in its judgment in paragraphs 21 and 22, has considered all

the above aspects in proper perspective and came to the correct conclusion that the appellant-accused is a lessee under Thayammal on the date of the occurrence and he alone was cultivating the land and that he wanted to protect his sugarcane field from the boars/pigs and without even licence, he put the electric fencing, which lead to the death of the deceased due to electrocution. I am forced to concur with the findings of the trial Court that the appellant-accused is guilty of the offences u/s 304 (Part-2) IPC and Section 39 of the Indian Electricity Act. So, I do not find any infirmity or illegality in the conviction imposed on the appellant-accused by the trial Court.

20. At this juncture, learned Counsel for the appellant-accused would contend that even if the Court comes to the conclusion that the appellant-accused is guilty of the offence u/s 304 (Part-2) IPC, leniency may be shown to the appellant-accused while imposing the sentence.

21. Considering the gravity of the offence u/s 304 (Part-2) IPC, I am inclined to reduce the sentence of rigorous imprisonment from five years to two years.

22. The conviction and sentence imposed on the appellant-accused u/s 39 of the Indian Electricity Act are liable to be confirmed.

23. In fine, the Criminal Appeal is dismissed.

(i) The conviction imposed on the appellant-accused u/s 304 (Part-2) IPC is confirmed, but the sentence is reduced from five years" rigorous imprisonment to two years" rigorous imprisonment.

(ii) The conviction and sentence imposed on the appellant-accused u/s 39 of the Indian Electricity Act are confirmed.

(iii) Since the appellant-accused is on bail, the trial Court is directed to take steps to secure his custody, to undergo the remaining period of sentence.

(iv) The sentences imposed on the appellant-accused shall run concurrently.

(v) The period of imprisonment already underdone by the appellant-accused shall be set-off u/s 428 Cr.P.C.