

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 11 OF 2005

RAJALINGAM

.... APPELLANT

Versus

STATE REP. BY INSPECTOR OF POLICE RESPONDENTS

ORDER

1. Three accused, including the sole appellant herein, were put on trial for offence under Section 302/34 of the Indian Penal Code, alternatively under Section 304-A of the Indian Penal Code. The Trial Court convicted the appellant under Section 302 and other two accused under Section 302/34 of the Indian Penal Code and sentenced them to undergo life imprisonment.

2. Aggrieved by the conviction, they preferred C.A. No. 287 of 1998 and the Madras High Court by the impugned judgment maintained the conviction of the sole appellant but set aside the conviction and sentence of the other two accused persons and that is how the appellant is before us with the leave of the Court.

3. According to the prosecution, the appellant was employed as wireman while the other accused persons were employed as lineman at the Divisional Office of the State Electricity Board, Pallapatty. The

deceased Anandhan, the son of P.W.-1 Ponnambalam and P.W.-17 Shanmigathai were employed as contract labourers in the Board. According to the prosecution, prior to the date of incident, the staff of the Electricity Board collected donation during the Ramzan festival but the deceased refused to be associated with the collection of donation. It is alleged that during that period, appellant told him that he would be killed by electrocution. The prosecution has further alleged that on 6th of August, 1991 at about 5.30 p.m., the appellant alongwith other accused came to the residence of the deceased and told him that an electric fault is to be rectified at Chinna Odai Street, Pallapatti. The deceased Anandhan was taken to the said place for rectification of the fault and was asked to climb on the electric post. According to the prosecution, appellant was standing down the electric post while the other accused were near the transformer and had switched off the electric line. It has further been alleged that while the work was going on, the appellant informed the other accused that work is over and they can switch on the line and as directed, the line was switched on and the deceased who was at work was electrocuted. In relation to the incident, a report was submitted by Kannan (P.W.-15), Junior Engineer of the Electricity Board to the Police Station and after investigation, charge sheet under Section 304-A of the Indian Penal Code was filed. It is relevant here to state that P.W.-1 Ponnambalam, the father of the deceased filed complaint *inter alia* alleging that the appellant alongwith other accused committed the murder of his

son in furtherance of their common intention.

4. The trial of the accused persons, for offence under Section 304-A of the Indian Penal Code was pending before the Magistrate whereas the prosecution under Section 302/34 of the Indian Penal Code was before the Sessions Judge. As both the prosecutions related to the same offence, the matter pending before the Magistrate for trial was sent to the Sessions Judge and both the cases were tried together in which common evidence was led.

5. The Trial Court, on appreciation of the evidence, came to the conclusion that all the accused in furtherance of their common object caused the death of the deceased Anandhan and accordingly convicted and sentenced all of them as above.

6. On appeal, the High Court acquitted the other accused persons but convicted the appellant under Section 302 of the Indian Penal Code and while doing so, observed as follows:

“18. Therefore, from the circumstances available, it would be abundantly clear that it was A-1 who with his previous motive aggrieved over the non-cooperation of the deceased in respect of collection of amounts during Ramzan festival has taken him to the electric post No. 235 and asked him to do the work. When the deceased was carrying on the work, A-1 gave instruction to A-2 and A-3 to switch on the transformer and caused his death.”

7. Mr. S. GuruKrishna Kumar, learned counsel appearing on behalf of the appellant submits that in the police case and in the complaint case, different allegations have been levelled, which renders the prosecution story unreliable. He points out that the evidence of P.W.-2 Rengan, P.W.-3

Azhagan and P.W.4 Sampath were recorded for the first time in Court and they have admitted this fact in their cross-examination. He has referred to the topography of the place of occurrence as had surfaced in the evidence of prosecution witnesses and submits that from their evidence, it is clear that distance between transformer and the electric post was not only large but intervened by several buildings and therefore it was not possible for the appellant to give signal for switching on the line to the other accused. He has also referred to the evidence of P.W.-5 and submits that from his evidence, it would be evident that the prosecution has not come up with the true story. On all these grounds, the appellant deserves to be granted the benefit of doubt, submits Mr. Kumar.

8. Ms. Promila, learned counsel, however, representing the respondents submits that both the Courts have concurrently found the appellant guilty, his conviction does not deserve any interference by this Court.

9. We have appreciated the rival submissions and find substance in the submission of Mr. S. GuruKrishna Kumar. P.W.-2 Rengan is a road side astrologer and claimed to be a witness to the occurrence but has admitted that his statement was never recorded by the police during the course of investigation and for the first time he is deposing during the trial. Similar is the admission of P.W.-3 Azhagan, a rickshaw puller and P.W.-4 Sampath, a Tailor. P.W.-5 Gopal has stated in his evidence that the accused Sundararaj (since acquitted) had gone to the work at Chinna

Odai Street after switching off the line from the transformer and after completing the work, he returned and switched on the electricity line. According to his evidence, while the acquitted accused was near the transformer, the appellant herein, came and asked to switch off the line as the deceased had got shock on the pole. He has not been declared hostile by the prosecution. From his evidence, it seems that the transformer was at a distance from the electric pole where the deceased got electrocuted and the appellant rushed there to ensure that the line is switched off. Thus, this witness has come out with an entirely different story. Further from the topography of the place of occurrence, it was not feasible for the appellant to instruct other accused standing near the transformer to switch on the line. In the face of the aforesaid, we are of the opinion that it would be unsafe to sustain the conviction of the appellant on the basis of the evidence on record. Accordingly, he is entitled to be given the benefit of doubt and we grant him that.

10. The appellant is on bail. He shall be discharged of his bail bonds.

11. In the result, the appeal is allowed, impugned judgment of conviction and sentence is set aside with the direction aforesaid.

.....J.
(HARJIT SINGH BEDI)

.....J.

(CHANDRAMAULI KR. PRASAD)

NEW DELHI,
FEBRUARY 23, 2011.

