

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 475 OF 2004

The State of Maharashtra
through Police Station, Ghansawangi,
District Jalna .. Appellant

Vs.

Asaram S/o Baliram Pawar,
age : 40 years,
R/o.: Bolegaon, Tq. Ghansawangi,
District Jalna .. Respondent

Mrs. R.K. Ladda, A.P.P. for the appellant/State
Mr. Mayur V. Salunke, Advocate with Mr. Nitin Jagdale,
Advocate h/f. Mr. V.D. Salunke, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 29/09/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of acquittal of the present respondent from the offence punishable under section 304-A of the Indian Penal Code and under section 39 of the Indian Electricity Act r/w. Section 379 of the Indian Penal Code, by the learned Judicial Magistrate First Class, Ambad vide judgment and order dated

15/04/2004 passed in RCC No. 253 of 2000, the present appeal is preferred by the State.

3. The prosecution case in short as as under:-

. That on 29/9/2000, deceased Shivaji Kale has died due to the electrocution while approaching the well of the present respondent in the field. It was gathered that the present respondent has secured an illegal electric connection from the nearby pole for irrigation purposes. However, due to stormy wind, the electrical wire had fallen in the field, ultimately causing death of the deceased Shivaji due to the electrocution. Therefore, the crime came to be registered.

4. Before the learned Judicial Magistrate First Class, Ambad, in all 5 witnesses were examined. It however appears that the medical evidence regarding the post-mortem could not be proved as the Medical Officer has died. Unfortunately, no efforts were taken to prove the hand-writing or signature of the Medical Officer. The learned Judicial Magistrate First Class took into consideration the statements of the wife of the deceased i.e. PW3 that upon hearing the cry of her

husband, as "मेलो मेलो" (dying dying), she rushed at the spot and found the copper wire lying on the ground. According to the learned Judicial Magistrate First Class, therefore, she was not the witness to the incident of actual electrocution. In the circumstances, the acquittal came to be recorded.

5. The learned A.P.P. submits that the evidence on record would show that the deceased has died due to the electrocution. The statement of the lineman of Maharashtra State Electricity Board i.e. PW5 would show that there was no regular electric connection given to the motor pump of the respondent. In the circumstances, she submits that the learned Judicial Magistrate First Class ought to have convicted the respondent.

6. Learned counsel for the respondent however supported the reasoning forwarded by the learned Judicial Magistrate First Class.

7. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that on 29/9/2000, at about 2:00 pm in

gat no. 200 of village Bolegaon, Tq. Ghansawangi, Dist. Jalna, the present respondent has caused the death of deceased Shivaji by negligence amounting to culpable homicide ?

II) Whether the prosecution has proved that during the given date, time and place, the present respondent has caused theft of the electrical energy ?

My finding to both the points are in the negative. The Appeal is therefore dismissed for the reasons to follow.

R E A S O N S

8. The most important and prominent fact of the case that the deceased has died due to electrocution, is not at all proved. The chargesheet would show that the Medical Officer has died, however, the prosecution has not taken care to prove the post-mortem examination report passed by the said Medical Officer. The evidence of the wife of the deceased would show that upon hearing the cry of the deceased, she immediately rushed to the

spot and found that the deceased was lying on the ground and the copper wire was there lying on the ground. The lineman has deposed that no regular electricity connection was given to the respondent.

9. If all these things are taken into consideration, the facts would be clear. While there is no proof that the deceased has died due to electrocution, the statement of the witnesses would not show that, in their presence certain electric bursting had occurred. The reasoning of the learned Judicial Magistrate First Class in the present appeal against acquittal, therefore, needs no interference.

10. In the circumstances, the Appeal is hereby dismissed. Bail bonds, if any of the respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/