

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No. 842 OF 2007

ORDER:

This Criminal Revision Case under Section 397 (1) read with Section 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the accused no.4 is directed against the judgment dated 20.02.2007 of the learned I Additional Sessions Judge, Srikakulam made in Criminal Appeal No.85 of 2005.

1. (a) By the judgment dated 25.08.2005 in C.C. No.530 of 2001 the learned Judicial Magistrate of First Class, Rajam convicted the petitioner/A4 of the offence punishable under Section 304-A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of two years and pay a fine of Rs.5,000/- and undergo simple imprisonment for a period of three months in default of payment of the said fine amount and had further directed that Rs.4,000/- shall be awarded to PW2/the wife of the deceased towards compensation under Section 357(3) of the CrPC. However, the learned I Additional Sessions Judge while dismissing the appeal of the accused and confirming the conviction had set aside the substantive sentence of imprisonment while maintaining the sentence of fine imposed by the learned trial Judge.

2. I have heard the submissions of the learned counsel for the petitioner/A4 and the learned Public Prosecutor. I have carefully perused the material record.

3. On the first information lodged by the In-charge, Village Administrative Officer, by name, Innumula Bhaskara Rao of Bodduru village, a case in Crime No.64/2001 was registered by the Station

House Officer, Santhakaviti Police Station of Srikakulam District for the offence punishable under Section 304-A of the IPC against the accused (1) K.Pydi Reddy, the then Divisional Electrical Engineer (Operation Division), Eastern Power Distribution Company of A.P. Limited, Srikakulam (2) Sanapala Janardhana Rao, the then Assistant Divisional Engineer (Operations), Eastern Power Distribution Company of A.P. Limited, Rajam (3) Mula Sri Ranga Sai, the then Additional Assistant Engineer (Operations) Eastern Power Distribution Company of A.P. Limited, Santhakaviti (since died) and (4) Nadipalli Papinaidu, Lineman, Bodduru, Eastern Power Distribution Company of A.P. Limited. After investigation, a charge sheet was filed before the learned Judicial Magistrate of First Class, Rajam and cognizance was taken for the offence punishable under Section 304-A of the IPC against all the accused. The case as stated in the charge sheet, which is necessary and relevant for consideration, in brief, is as follows: 'There was an electrical pole bearing No.1985 T.428-SKL-26.1.73-27 near the house of one Vavilipalli Janardhana Rao (LW12) the then Sarpanch of Bodduru village. During the recent past, due to natural calamities the stay wire and earth wire were cut off and were tied to the said electrical pole at a height of 4 feet from the ground. Normally, electricity does not pass to the stay wire and the stay wire will be tied to the pole at the top maintaining a distance of about ½ foot from the live wires running on the pole. There are chances of stay wire and earth wire coming into contact with live wires in case of heavy wind and rain. The villagers of Bodduru and others used to sit on the pial where the above said pole was situate and they used to feel mild shock through the stay wire and earth wire. In spite of repeated representations to the electricity authorities, no steps were taken to rectify the defect and the said fact shows negligence on their part. While so, on

13.09.2001 at about 7.00 AM the deceased Gorle Ramulu of Munakalavalasa village was driving the cattle to Rajam Shandy. On the way, when he, along with the cattle, had reached the aforementioned electrical pole, the cattle went astray and out of his control. In order to stop and control, he had held with one hand the (kanni) rope around the neck of the cattle and had also held the said electrical pole with another hand for support. At that time, the stay wire and the earth wire came into contact with the live wire, which was loosely hanging and electricity had passed through. As a result, the deceased was subjected to shock and died on the spot due to cardiac arrest. Valluru Balaram (LW6) and Valluri China Latchanna (LW7) of Bodduru village witnessed the incident. They both were also aware of the villagers' experiences in regard to feeling mild shock through the pole and the inaction of the officers of the electricity authorities in rectifying the defect despite complaints made by the villagers. Valluru Prabhakara Rao of Bodduru village (LW8) and Laveti Venugopalanaidu, Ambakandi village (LW9) had also witnessed the incident and informed the same to the family members and relatives of the deceased, who are LWs 2 to 5. During investigation, all the witnesses were examined and their statements were recorded. Inquest was held over the dead body of the deceased in the presence of LW1, the wife of the deceased and inquest panchas and the body was sent for post mortem examination. The Investigating Officer observed the scene of offence and seized the stay wire and earth wire in the presence of the mediators LWs 1 and 12 under the cover of an observation report. LW17, the Medical Officer, Area Hospital, Palakonda having conducted autopsy gave a Post Mortem certificate opining that the deceased had died due to Cardio respiratory arrest possibly due to electric shock. The charge sheet was laid after the investigation done by LW18, the then Assistant Sub-Inspector of Police was

verified by LW19, the then Sub-Inspector of Police.

4. During the course of trial, PWs 1 to 11 were examined and exhibits P1 to P16 were marked. No material objects were exhibited. The accused no.3 had died; the accused 1 and 2 were acquitted by the trial Court.

5. Now the points for determination are -

- (i) Whether the death of the deceased had occurred due to electric shock leading to cardio respiratory arrest?
- (ii) And, if so, whether the prosecution has sufficiently established that the cause of death of the deceased is attributable to the negligent act of the A4, which is of culpable nature?
- (iii) Whether the judgment of the Court below confirming the conviction and imposing the sentence of fine is sustainable under facts and in law?

6. **POINT No.1:**

It is apt to now refer to the evidence relevant to the point. PW1 the then Village Administrative Officer is not an eye-witness to the incident and he gave the first information to the police on the information received by him from the Talayari. Exhibit P1 is the report given by him. Exhibit P14 is the FIR issued by the police. PW1 had later figured as a witness at the time of the inquest. Exhibit P2 is the Inquest report. PWs 2, 3 and 4, who are the wife, the father and the brother of the deceased, are not eye witnesses to the incident. PW4 had deposed that while his brother was proceeding along with his bulls, the bulls went out of control and that while catching hold of the bulls he had touched the hanging wires of the electric pole for support and had died. PW5 testified that there is a current pole at the house of Vavilapalli Satyanarayana and that the earth wire was around the pole and that on the date of incident, the

deceased while coming with his bulls had touched the stay wire and had died due to shock and that he (PW5) along with others had informed about the incident to the family members of the deceased. In the cross examination, it was elicited to the effect that the deceased suffered electric shock as he had touched the pole with his hands. PWs 6 and 7 did not support the case of the prosecution though they had stated that the deceased after having caught hold of the live wire of the electric pole had fallen down and had received head injury. PW9, the Doctor, who had conducted the autopsy on the dead body of the deceased and had issued exhibit P13 Post Mortem certificate had testified that the deceased had sustained the following four injuries:

- 1) **Three abrasions on the left side of face each measuring 3 x 1 cm, 3 x 2 cm and 2 x 1 cms.**
- 2) **An abrasion of 2 x 1 cms. on the nose**
- 3) **An abrasion on right side of face lateral to nose measuring 3 x 2 cms.**
- 4) **A burn's wound measuring 3 x 2 x ¼ cms. on the right side of face.**

He had opined that the first three injuries are ante mortem and the fourth injury is a burn injury, which might have been caused due to contact with electrical wires. According to him, the cause of death is cardio respiratory arrest possibly due to electric shock. In the cross examination of PW9, it was sought to be elicited that the fourth injury mentioned above was subsequently interpolated in the Post Mortem report and that if the fourth injury is to be excluded from consideration, it is to be accepted that the deceased did not suffer any burn injuries due to electric shock. Now the crucial question is as to whether the fourth injury is subsequently interpolated in the Post Mortem report. Further, at the time of examination under Section 313 of the CrPC, the accused had filed an enquiry report of the Department, wherein, it was mentioned that as per the observations of the Enquiry Officer, there was no possibility of electric shock in the subject case. On this aspect, the courts below

had held that the enquiry officer of the department would naturally support the officials of his department and therefore, did not give any weight to the said report filed at the time of examination of the accused under Section 313 of the CrPC. The learned Public Prosecutor placing reliance on certain passages in the text book of medical jurisprudence and toxicology by N.J.Modi 13th Edition, at page 207, which was also relied upon before the court below, had contended that in all cases of shock there need not be any burn injuries and that death from electrical shock may occur immediately by sudden stoppage of action of the heart or due to paralysis of the respiratory centre or due to nervous inhibition and that in all such cases, burn injuries or external injuries may not appear on the body of the person, who died due to electrocution and that the appearance of burn injuries on the body of the deceased depends upon his health condition and also the voltage of the current, which might have passed through the body of the deceased. Therefore, even assuming for a moment that there is no burn injury and that the same was interpolated in the post mortem certificate, still, the defence contention that the death was not due to electric shock cannot be countenanced. PW5, who appears to be a direct witness to the incident had categorically deposed that at about 3 ½ years prior to his giving evidence, i.e., in the year 2001 at about 7 AM, the deceased had died due to current shock at the current pole at the house of Vavilapalli Satyanarayana and that the earth wire was around the pole and that on that day, the deceased who was coming with the bulls had touched the said wire and had died due to shock and that he and two others had identified the deceased and had informed the same to his family members and also to the VAO. In his cross-examination, he had stated to the effect that at that time the deceased caught hold of one side of the rope and had tried to catch the bulls by pulling the rope forcibly and that at that moment,

the deceased had fallen down and that the electric shock was caused as the deceased had touched the pole with his hands. The aforementioned ocular evidence coupled with the medical evidence in the well-considered view of this court is sufficient to safely hold that the death of the deceased had occurred on account of cardio respiratory arrest due to electric shock. The point is accordingly answered.

7. POINTS Nos.2 and 3:

7. (a) In view of the finding that the death of the deceased had occurred on account of cardio respiratory arrest due to electric shock, it is to be examined as to whether the cause of death was the culpable negligent act of the accused no.4, who is admittedly a lineman. According to the case of the prosecution, some time prior to the incident the earth wire and stay wire of the electrical pole were cut off and they were tied around the pole and that the villagers are experiencing mild shock from the pole and that despite representations by the villagers of Bodduru, no action was taken by the electricity authorities to rectify the defect and that therefore, the accused who were all negligent in maintaining electrical wires and other wires at the electrical pole are responsible for the cause of death of the deceased. All the accused except A4 were acquitted. During the course of investigation, the Investigating Officer seized the stay wire and earth wire under a seizure panchanama; however, the seized wires were not exhibited as material objects. No explanation is forthcoming for not exhibiting the said material objects. There is no evidence worth accepting on record that there were previous complaints by the villagers to the effect that they are experiencing mild shocks from the pole and that their representations were not attended to by the electricity authorities. In a case of this

nature, where criminal liability is to be fastened against the accused there must be unimpeachable evidence to prove beyond reasonable doubt that even before the incident the earth wire and the stay wire and the pole are having electricity supply from the live wires attached to the pole and that the villagers are experiencing mild shock whenever they are touching the pole. Even in the sketch of scene of offence filed by the Investigating Officer, he did not show the position of the stay wire and earth wire around the pole. He did not admittedly take the assistance of any member of staff of the electricity department before seizing the earth wire and stay wire. Be that as it may, after the incident the electricity department held an internal enquiry and a report was furnished by an officer of the department. The accused had filed the said report during their examination under section 313 of the CrPC and the same on a perusal would show that there is no possibility of electric shock from the pole. Because A4 is a lineman and is responsible for the maintenance of the electrical installations in the locality where the incident of death of the deceased had occurred due to electric shock there cannot be an inference of culpable negligence, in the absence of direct proof of culpable negligence on the part of A4. Negligence of culpable nature in a case of this nature requires higher standard of proof i.e., proof beyond reasonable doubt and there cannot be any inference without adequate proof. Mere negligence in discharge of duties does not attract penal consequences. Therefore, the evidence on record in the well considered view of this Court does not justify drawing of a conclusion that the cause of the death of the deceased is attributable to the negligent act of A4, which is of culpable nature. The point is accordingly answered.

7. (b) In view of the findings on point no. 2, it follows that the prosecution had failed to establish the guilt of the accused

beyond reasonable doubt for the offence with which he was charged. There is one more aspect to be considered in the matter. The subject incident had taken place on 13.09.2001. A4 is a lineman on the rolls of the A.P. State Electricity Board as on the said date. The Electricity Act, 2003 (36 of 2003) came into force with effect from 26.05.2003. Section 185 of the said Act which deals with Repeal and savings, says that the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed. Section 168 of the Electricity Act, 2003 (36 of 2003) reads as follows:

168. Protection of action taken in good faith - No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employee of the Appellate Tribunal or any Members, officer or other employees of the Appropriate Commission or the assessing officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

Section 169 of the Electricity Act, 2003 (36 of 2003) reads as follows:

169. Members, officers, etc., of Appellate Tribunal, Appropriate Commission to be public servants – The Chairperson, Members, officers and other employees of the Appellate Tribunal and the Chairperson, Members, Secretary, officers and other employees of the Appropriate Commission and the assessing officer referred to in section 126 shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 56 of the Indian Electricity Act, 1910 (Act 9 of 1910) reads as follows:

56. Protection for acts done in good faith –

- (1) No suit, prosecution or the other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.
- (2) No Court shall take cognizance of an offence under this Act, by a public officer except with the sanction---
 - (a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other case, of State Government.)

The relevant provision of Section 21 of the Indian Penal Code, which deals with **Public Servant**, reads as follows:

21. **“Public Servant”** – The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely:-

Second----- Every Commissioned Officer in the Military, [Naval or Air] Forces of India]

Third: Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions:]

.....

Twelfth: Every person

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

Therefore, it is to be held that A4 is a public servant and for his prosecution sanction is necessary. Section 197 of the Code of Criminal Procedure reads as under:

197. Prosecution of Judges and public servants: (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.
- (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Therefore, for want of sanction also the prosecution stands vitiated and the accused is entitled to be acquitted. On this aspect the learned Public Prosecutor had argued that the issue that sanction is required for the prosecution of A4 was not raised before the Courts below and also in the grounds of revision and that therefore, the

accused is not entitled to raise the said contention before this Court. The learned counsel for the petitioner/A4 would submit that the instant question being a question of law, which goes to the root of the matter, the same can be raised at any time and that the law permits raising of such contention before this Court. In view of the legal position obtaining, this Court is satisfied that the accused can be permitted to raise the said contention before this Court.

7. (c) In view of the detailed discussions coupled with reasons and the findings recorded supra, the points are answered holding that the impugned judgment finding the accused guilty of the charge under Section 304-A of the Indian Penal Code and convicting him for the said offence and imposing the sentence of fine is unsustainable both under facts and in law, and that therefore, the said impugned judgment is liable to be set aside.

8. In the result, the Criminal Revision Case is allowed and the impugned judgment passed in Criminal Appeal No.85 of 2005 confirming the judgment of the trial court in C.C. No.530 of 2001 finding the accused guilty is set aside and the accused is accordingly acquitted of the offence punishable under Section 304-A of the IPC. The bail bonds of the accused shall stand cancelled and the fine amount, if any, paid shall be refunded to the accused after the further appeal or revision time is over. However, in case, as per the directions in the judgments of the court below, the compensation of Rs.4,000/- is already paid to PW2 from the fine amount collected from A4, then the same shall not be recovered/ recollected from PW2. Whether so paid or not, the said amount paid/payable to PW2 shall be treated as compensation to the victim payable from the funds of the District Legal Services Authority, Srikakulam in view of the ratio in the decision in **Suresh v. State of**

Haryana^[1]. Therefore, the fine amount to the extent of compensation i.e., Rs.4,000/- shall be refunded to A4 from out of the funds of the District Legal Services Authority of Srikakulam District.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

M.SEETHARAMA MURTI, J

19th January 2015
MVA

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^[1] IV (2014) CCR 559 (SC)