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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. L.P.390/2015**

Date of decision: 14.10.2015

STATE GOVT. OF NCT OF DELHI Petitioner
Through: Mr.Raghuvender Varma, APP.

versus

RAJENDER NAGAR Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

Crl.M.A No.6970/2015

Exemption allowed subject to all just exceptions.

Application is disposed of.

Crl.M.A No.6969/2015

For the reasons shown in the petition, the delay in filing the petition is condoned.

The application stands disposed of accordingly.

CRL. L.P.390/2015

1. Respondent Rajender Nagar and one Shakuni (since dead) being the contractor and supervisor respectively of Delhi Vidyut Board were charged for the offences under Sections 304A/34 of the IPC for having neglected and omitted to take sufficient precaution in providing rubber gloves to worker/victim Tribhuvan Pandey (deceased) who got

electrocuted while working on an electric pole situated outside Nav Janta properties without wearing protective gloves and due to that reason expired.

2. The respondent was acquitted in trial for the reason that the contract between the respondent and the Delhi Vidyut Board could not be collected/placed on record and, therefore, in the absence of any evidence with regard to the contract with the Delhi Vidyut Board, the respondent could not have been charged and convicted for the offence under Section 304A/34 of the IPC.

3. The present petition on behalf of the State is directed against the aforesaid judgment and order of acquittal dated 30.08.2002 passed by the Metropolitan Magistrate:02 (Central), Tis Hazari Courts, New Delhi in connection with FIR No.307/01 (P.S.Timarpur) instituted for the offence under Section 304A/34 of the IPC.

4. Mithilesh Pandey (PW-1) wife of the deceased Tribhuvan Pandey deposed before the Trial Court that on 19.06.2011 at about 9 AM co-accused Shakuni (since dead) came to her house and called her husband for installing the electric connection. It was stated by PW-1 that the respondent had taken a contract from the Delhi Vidyut Board. Shakuni worked as a supervisor. The husband of PW-1 was under the employment of the respondent for about a month. The husband of PW-1 asked for a rope and a pair of gloves from Shakuni as he apprehended that he might get electric shock but the same was not provided to him and aforesaid Shakuni insisted upon the husband of PW-1 to climb the pole for installing electric connection. After about a while, PW-1 was informed that her husband has been electrocuted. On

such information she went to the place of occurrence and took her husband to a local doctor and thereafter to Durga Nursing Home, Mukherjee Nagar where her husband was declared brought dead. She has deposed that in the meantime police was informed. The dead body of her husband was taken to the mortuary for post mortem and her statement was recorded (Ex.PW-1/A) whereupon the FIR was registered.

5. Anil Kumar Shukla (PW-2) has deposed that at the time of incident he was present at a pan shop and he heard that Tribhuvan (deceased) had received an electric shock. On such information, he ran to the place of occurrence and found the deceased lying on the road unconscious. He assisted PW-1, the wife of the deceased, in taking the injured to the hospital where he was declared dead.

6. Aforesaid witness namely PW-2 has categorically stated that the deceased was employed under the respondent and Shakuni, the supervisor had insisted upon the deceased to install electric connection without providing rope or pair of gloves to him. He has also categorically stated that at the time of the occurrence, the respondent was not present.

7. The post mortem report (Ex.PW-7/A) was proved by Mukesh Chand (PW-7) who has identified the signature of the doctor Rajesh Gupta who had prepared the post mortem report. The aforesaid doctor had left the services of the hospital and, therefore, the post mortem report was proved by PW-7.

8. That the deceased died due to electrocution is without doubt. The deceased, according to PWs.1 & 2 worked for the respondent and

Shakuni, who were the contractor and the supervisor respectively for undertaking electrical works on behalf of Delhi Vidyut Board. Shakuni, the supervisor was related to the respondent and was looking after the contract work of the respondent. Shakuni regularly visited the house of the deceased and PW-1.

9. Inspector Rajeev Shah (PW-11) recorded the statement of PW-1 and also prepared the site plan at the instance of PW-1. He has deposed that he had obtained the copy of the agreement (mark 11A) between Delhi Vidyut Board and the respondent.

10. However, Mahesh (PW-12), an Assistant from TPDDL has deposed that the original agreement between the Delhi Vidyut Board and the respondent was not available in the office as the same had been disposed of as per the record of the office.

11. Thus from the deposition of the relevant witnesses, what has come to the fore is that the deceased was asked by Shakuni to connect an electric line. When the deceased demanded rope and a pair of gloves, the same was not provided and Shakuni is said to have promised him that the same shall be provided in future. As ill luck would have it, the deceased got electrocuted while connecting an electric line on the pole in that instance only.

12. What has further transpired during the trial is that neither the respondent had gone to the house of the deceased nor was he present at the time of the occurrence. Another aspect of the case which stands established was that Shakuni worked as a supervisor whereas the respondent was the contractor for undertaking electrical works for the Delhi Vidyut Board. Since the work of supervision was entrusted to

Shakuni, it was the responsibility of Shakuni to provide all protection to workers and electricians whose services were taken for execution of the electrical works.

13. Though even in the absence of the original agreement between the respondent and the Delhi Vidyut Board it stands established that the respondent worked as a contractor of Delhi Vidyut Board; nonetheless he could not have been prosecuted vicariously for lapses on the part of the supervisor namely Shakuni (since dead) in not providing safety materials to workers/workmen. Since the work of supervision was entrusted to Shakuni by the respondent, it can safely be presumed that the aspect of safety of the workman was also entrusted to the supervisor. What cannot be lost sight of is that the deceased also should not have undertaken to climb the electrical pole without wearing a pair of gloves.

14. Thus no case appears to have been made out against the respondent under Section 304A/34 of the IPC.

15. For the reasons aforesaid, the leave to appeal is declined.

16. The petition is dismissed.

OCTOBER 14, 2015
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ASHUTOSH KUMAR, J