

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.355 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

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Sunil Kumar Thakur, son of Late Ramadhar Thakur, resident of village Hansopur,
P.S. Khanpur, District Samastipur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Ms. Rashmi Bharti with Ms. Kanchan
Kumari, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date: 26-03-2018

Sole appellant stands convicted under Section 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and a fine of Rs.10,000/- with default clause vide judgment and order dated 3.7.2003 passed by Sri A.S.Lal, the then Presiding Officer, Fast Track Court No.1, Samastipur in Sessions Trial No. 206 of 1990/91 of 2001.

2. Prosecution case as per complaint petition filed by PW 5 Sita Devi, which has been later on sent for registration of police case, in short, is that deceased Jaibeer was a student in B.A. final year in Uma College and was very emotional and some persons used to cheat him. It is also prosecution case that on the day of occurrence, i.e., 28.5.1985 at about 6-7 A.M. in the morning accused appellant Sunil came and pressed Jaibeer to go out as Sunil had purchased a electric



fan and Sunil took Jaibeer to electric transformer, which is by the side of Harijan Toli. Accused Sunil instigated and persuaded Jaibeer to climb up transformer for repairing, upon which Jaibeer had hesitated but on much pressure of Sunil he climbed over the transformer, although there was sparking and that other persons were forbidding him. However, Sunil instigated Jaibeer and also assured that he was switching off the line and there was no fear. Ultimately Jaibeer went upon the transformer and began to meddle with electric line for making repair and at that moment accused Sunil moved towards electric pole although Jaibeer cried loudly forbidding Sunil for switching on, but Sunil still switched on electric line, due to which Jaibeer got electric shock and Sunil fled away. Thereafter his dead body was brought down and father of Sunil, namely, Ramadhar Thakur came and taken his dead body on the plea that he will get him treated by Doctor but later on she came to know that he had not taken the dead body to any Doctor and burn his dead body by sprinkling kerosene oil.

3. The aforesaid complaint petition was sent under Section 156(3) Cr.P.C. for registration of police case and on that basis Khanpur P.S.Case No. 30 of 1985 was registered under Sections 302, 201 and 420 of the Indian Penal Code against the appellant and his father Ramadhar Thakur (since dead).

4. During investigation police finding case not true against



the appellant under Sections 302/201 IPC has submitted final form but learned Chief Judicial Magistrate differing with the opinion of the I.O. has taken cognizance of the offence under Sections 302 and 201 IPC against the appellant and after commitment the case was ultimately traveled to the file of the learned Trial Judge for trial and disposal.

5. During trial charges were framed against the appellant under Sections 302 and 201 IPC.

6. In order to substantiate its case the prosecution has examined altogether 10 witnesses, they are PW 1 Yogendra Prasad, who is a formal witness and has proved formal FIR (Ext.1), PW 2 Bimal Paswan, who claims to be an eye-witness to the occurrence, PW 3 Manoranjan Kumar, who claims to be an eye-witness to the occurrence, PW 4 Ram Swarath Rai, who claims to be an eye-witness to the occurrence, PW 5 Sita Devi, who is informant and sister of deceased, PW 6 Nawal Kishor Thakur, who claims to be an eye-witness to the occurrence, PW 7 Surendra Thakur, who is “bhagina” of deceased, PW 8 Janardan Thakur, who is uncle of deceased, PW 9 Krishnaballav Pd. Singh, who is Advocate Clerk and has proved the complaint petition (Ext.2) and PW 10 Kiran Kumari, who is wife of the deceased.

7. On behalf of defence, two witnesses have been examined, they are DW 1 Kapildeo Thakur and DW 2 Kailash Pd. Thakur and defence has brought on record certified copy of deposition of Sita



Devi in Case No. 308 of 1990 (Ext.A).

8. Evidence of DW 1 shows that he was permanent resident of village Hansopur and in 1989 electric pole was dugged in his village and electric line was given and thereafter there was no electricity in the village. Evidence of DW 2 shows that in 1989 electric line was installed in his village and prior to that there was no electric current in the village. Defence has examined those witnesses on the point that there was no electric current in the village in question at the time of occurrence.

9. Learned trial court after conclusion of trial has convicted the appellant under Section 304 Part II of IPC and sentenced him as stated above.

10. Learned counsel for the appellant has assailed the impugned judgment on the ground that there is delay of 26 days in lodging of the case and case has been lodged by step-sister of the deceased, whereas wife of deceased was present at the house but no step was taken by her and, as such, possibility of manipulation and false implication cannot be ruled out. Further contention of learned counsel is that evidences of witnesses show that there is no eye-witness to the occurrence and defence evidences also show that there was no electric current in the village at that time and, as such, prosecution story does not appear to be believable. It is further submitted by learned counsel that even if the prosecution evidence is



believed, at best it is a case under Section 304A IPC, i.e., causing death by negligence and appellant cannot be held guilty under Section 304 Part II IPC, as such, conviction of the appellant is not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has defended the impugned judgment stating that complainant/informant has given explanation for delay in lodging the case as she has stated that as case has not been lodged by wife of deceased because she was waiting for his brother but later on brother of wife of deceased had not filed any case and coming to know the same, she has filed the case and, hence, delay has properly been explained. Further submission of learned counsel for the State is that evidence shows that it is a case of 304 Part II IPC as appellant has knowledge that in transformer electric line was there as bulb was lighting at that time but despite of that he forced Jaibeer to climb over the transformer for repairing and switched on the same, as such, the conviction of the appellant is just and proper and does not require any interference by this Court.

12. Having heard both sides and on perusal of the evidence it appears that PW 5 is the complainant/informant in the present case and her evidence discloses that she was living in Hansapur village in her “naihar” and deceased Jaibeer was his step-brother. Her evidence further discloses that appellant Sunil came and told that he has purchased a fan and he has taken Jaibeer along with him and at 10



A.M. when Jaibeer did not return, she had gone in search of him at the shop and there she came to know that Jaibeer and Sunil had gone to transformer and she went there and found Jaibeer over the pole and Sunil was standing below and Jaibeer told not to give connection, but Sunil gave connection and bulb lighted in the pole and Jaibeer fell down on the wire and when he died he fell down to earth. Her evidence also discloses that father of Sunil came and taken him for treatment and they have disposed of his dead body. Her evidence also shows that wife of Jaibeer told that she will be lodging case after consulting his brother and when her brother came, accused persons threatened him and, as such, his brother had not lodged case. She came to know the same after ten days and then she has lodged the present case. The aforesaid evidence if found to be true this witness has knowledge about the death but in spite of that she had not informed to the Mukhiya or Sarpanch or village Chaukidar immediately after the occurrence and she waited for 26 days and lodged the case after 26 days in the court.

13. Learned counsel for the appellant has drawn my attention towards the statement of this witness in paragraph-16 wherein she has stated that she has lodged the case one day after the occurrence and thereafter police came to her house and recorded her statement. Her evidence also shows that after death of Jaibeer she was looking after his property and Bhola Thakur used to help her. Contradiction has



also been taken in her evidence from the earliest statement before police in which she has stated that she had narrated before police that Sunil came and told that he has purchased a fan and asked Jaibeer to go along with him and she has stated before police that at 10 O'clock when Jaibeer did not return she went to the shop of Ajay and she has also stated that Jaibeer along with Sunil had gone to transformer. Her evidence also discloses that there was friendship between Jaibeer and Sunil. In this case I.O. has not been examined and, as such with respect to contradictions that have been taken from the earlier statement, due to non-examination of I.O., have not been controverted with her previous statement made before police, as such prejudice has been caused to the defence. However, on close scrutiny of the evidence of this witness it appears that she has exaggerated the fact so far second part of occurrence is concerned that she had gone and saw the accused person and deceased climbed over the transfer and Sunil has given the electric connection.

14. So far other witnesses are concerned, PW 7 does not claim to be an eye-witness to the occurrence as per his statement made in paragraph-3. PW 8 is also an hearsay witness as it appears from paragraph-7 of his evidence. So far PW 8 is concerned, he appears to be an eye-witness to the occurrence and his evidence shows that he found the deceased on the pole and deceased told that fault was repaired and he is climbing down, on which accused Sunil asked him



to wait as he was testing and when he gave connection the deceased received electric shock. Thus, his evidence discloses that Sunil was testing the connection when deceased received electric shock and his action does not appear to be intentional nor he had knowledge that deceased will die. So far evidence of PWs. 2, 3 and 4 is concerned, they are eye-witnesses to the fact that deceased was climbing over the pole and accused was standing below and deceased told the Sunil not to give connection in transformer. Considering the aforesaid evidence in its entirety it appears that Sunil has called the deceased on the plea that he has purchased a fan and he has taken him to transformer for repairing it and asked the deceased to climb over the pole and he has also connected the electric connection when the deceased was on the pole in order to test the same which caused electric shock to the deceased.

15. Considering the entire evidence it appears that at best it is a case of causing death due to negligence on the part of appellant Sunil which caused death of the deceased but learned trial court has failed to consider the aforesaid aspect of the matter while convicting the appellant under Section 304 Part II IPC. However, in the facts and circumstances, the conviction of the appellant is modified to a conviction under Section 304A IPC.

16. Submission of learned counsel for the appellant is that appellant has remained in custody for about one and a half months



during pendency of the appeal and occurrence is of the year 1985 and at the time of judgment he was at the age of 45 years and, as such, by now he must be at the age of more than 60 years, so lenient view may be taken.

17. I find force in the submission of learned counsel for the appellant. Considering the facts and circumstances, the sentence of appellant for five years is modified to the period already undergone by him in custody.

18. With the aforesaid modification in the conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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