

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 729 of 2002**

Shyam Lal s/o. Dema Singh Khairwar, age 35 years,
 occupation Labour, r/o. Village Bhanwarmal, PS
 Ramanujganj, Distt. Surguja (CG).

---Appellant

Vs

State of Chhattisgarh through Police Station Ramanujganj,
 Distt. Surguja (CG).

- Respondent.

For Appellant : Mr. A.K. Prasad, Advocate
 For respondent/State : Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****10-04-2018**

This appeal is preferred against the judgment of conviction and order of sentence dated 29-6-2002 passed by the 2nd Additional Sessions Judge, Link Court, Ramanunganj, Sessions Division Surguja (CG) in Session Trial No. 337 of 1999, wherein the trial Court has convicted the appellant for commission of offence under Section 304 Part II of the Indian Penal Code, 1860 and Section 39 of the Indian Electricity Act, 1910 (for short, "the Act, 1910") and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.1000 and to pay fine of Rs.1000/-/- with default stipulations respectively.

2. As per prosecution case, the appellant committed theft of electricity by direct illegal connection of electric wire from electric pole and engaged in irrigation in his kitchen garden by use of Tulu pump. It is alleged that the open wire was spread near the field of one Rampreet Singh and when his son Krishna aged about three years was playing there, he came into contact of electrified open wire and electrocuted.

3. Learned counsel for the appellant would submit that the evidence adduced by the prosecution is not reliable and offence under Section 304 Part II is not made out. He would further submit that the trial Court while convicting the appellant has not considered the relevant facts and thereby committed illegality.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charge, prosecution has examined as many as 12 witnesses.

7. PW/2 Rampreet Singh and PW/9 Sangeeta are witnesses of the incident. As per version of Rampreet Singh

(PW/2), the appellant connected electric wire directly from electric pole which was spread near his field. He further deposed that he objected the appellant but he did not heed his words and due to direct connection his son Krishna was electrocuted. Version of this witness is supported by the version of Sangeeta (PW/9) and they are firm in their statement right from the day of investigation. In their earlier statement recorded before the Investigating Officer they have stated that the appellant has spread open electrocution in his field illegally by hooking the wire in electric pole and the appellant is named in FIR for the said act. These witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of the defence regarding the act of the appellant. Version of these witnesses is supported by the version of Dr. B.R. Sharma, (PW/10) who conducted autopsy of the deceased Krishna on 10-12-1998 and as per opinion of the expert, cause of death is electrocution. He further opined that duration of death is since 24 hours of the examination. Version of this witness is supported by the version of Junior Engineer Varun Chakravarthi (PW/4) who deposed that he received information regarding illegal connection of electricity and recorded the statement of the appellant.

8. Now the point for consideration is whether the case falls under Section 304 Part II of the IPC or Section 304-A of the IPC.

9. For commission of offence under Section 304 Part II of the IPC, ingredients of Section 300 of the IPC has to be established which may be read as under.

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder,

- (i) if the act by which the death is caused is done with the intention of causing death, or
- (ii) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
- (iii) If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
- (iv) If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid”

10. In the present case, it cannot be said that the appellant has hooked the wire in electric pole with intention or knowledge that it is likely to cause death of the person. In view of this court, it is a case of causing death by doing negligent act, not amounting to culpable homicide. The act of the appellant falls under Section 304-A of the IPC. The finding arrived at by the trial Court for commission of offence under Section 39 of the Act 1910 is in the fitness of facts of the case and same is not liable to be interfered with.

11. Accordingly, the appeal is partly allowed. Conviction and sentence awarded by the trial Court under Section 304 Part II of the IPC is set aside. Now, the appellant is convicted under Section 304-A of the IPC and sentenced to the period already undergone by him i.e., from 26-1-1999 to 12-2-1999. Fine amount will remain intact. Conviction and sentence of the appellant under Section 39 of the Act, 1910 is affirmed.

12. With the above modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju