

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No.658 of 2008

JUDGMENT:

This criminal appeal is filed against judgment dated 15.05.2008 in Calendar Case No.9 of 2007 on the file of the Special Judge for trial of cases under Electricity Act-cum-I Additional Sessions Judge, Khammam, whereby, the learned Judge has convicted the appellant/Accused No.5 for the offences punishable under Section 304-A IPC and under Section 39 of the Indian Electricity Act and sentenced him to undergo rigorous imprisonment for a period of 1½ years for the offence under Section 304-A IPC and rigorous imprisonment for a period of 1½ years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for two months for the offence under Section 39 of the Indian Electricity Act.

2. The case of the prosecution in brief is as under:

The appellant/Accused No.5 is the owner of an agricultural land; that on 31.12.2001 at about 08.00 hours, the *de facto* complainant Seelam Chinna Venkata Kota Reddy lodged a report with the police alleging that they were working in the sugarcane fields in Gannavaram village, that Accused Nos.1 to 5 used to set up electrical trap erected with binding wire and by connecting the same to the live electrical wire around their field to pouch wild boars and animals illegally, and that having come to know the same, they admonished the accused persons previously not to do such activities, but Accused Nos.1 to 5 including the appellant paid deaf ear.

3. It is further alleged by the *de facto* complainant that on the night of 30.12.2001 at about 24.00 hours, his father, Seelam Venkatram Reddy @ Chitti Reddy (hereinafter referred to as "the deceased") went to the paddy field for watering and accidentally he came into contact with electrical wire trap illegally erected by the accused persons, including the appellant, that instantaneously, his father Venkatram Reddy died on the spot due to electrocution, that in search of his father, the *de facto* complainant and his brother were also suffered electric shock and found the dead body of his father. Thus, the death of Venkatram Reddy was caused only due to rash and negligent act of the accused persons, including the appellant/Accused No.5.

4. The report of the *de facto* complaint was registered as a case in Cr.No.127/2001 for the offence punishable under Section 304-A IPC and under Section 39 of the Indian Electricity Act.

5. After issuing First Information Report, the investigation was taken up by the concerned police officials, visited the scene of offence, got photographed the scene of offence, observed the scene of offence, prepared a rough sketch of the scene of offence, examined the witnesses and conducted inquest panchanama over the dead body of the deceased, and thereafter, referred the dead body for autopsy to the Government hospital. After completion of investigation, the concerned police filed the charge sheet before the jurisdictional court.

6. On securing the presence of the accused persons, the Judicial Magistrate of First Class, *Madhria* took the case on file, and having concluded that it is a case to be tried by Sessions Court, registered the same as PRC No.15/2003, and that after following necessary procedure,

as contemplated under Section 207 Cr.P.C, committed the case to the Sessions Court under Section 209 Cr.P.C., and in turn, the same was made over to the Special Judge-cum-I Additional Sessions Judge, Khammam.

7. On securing the presence of the accused persons, the Sessions Judge framed a charge for the offence under Section 304-A IPC and under Section 39 of the Indian Electricity Act, read over and explained to the accused in Telugu and they pleaded not guilty and claimed to be tried.

8. During trial, PWs 1 to 8 were examined and marked Exs.P1 to P13 and M.O.1.

9. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C, read over the incriminating material that appeared in the evidence of the prosecution witnesses to the accused, explained to them in Telugu, they denied the same and reported no defiance evidence.

10. Upon hearing argument of both the learned Public Prosecutor and learned Defense Counsel upon perusing the oral and documentary evidence on record, the trial Court found the appellant/Accused No.5 guilty for the charges leveled against him, convicted and sentenced him, as stated supra, and acquitted the rest.

11. Aggrieved by the impugned judgment, the present appeal is filed raising several contentions, mainly on the ground that the appellant/Accused No.5 did not arrange the alleged electrical trap and in the absence of direct evidence as to the arrangement of the electrical trap by the appellant/Accused No.5, recording conviction and sentence passed by the court below for the charges leveled against him is erroneous, that

apart, the conviction recorded by the court below is not based on any material, much less to conclude that the appellant committed offence under Section 304-A IPC, and in the absence of any specific finding that there is culpable negligence on the part of the appellant, recording the conviction against him is illegal and prayed to set aside the same.

12. During hearing, Sri N. Siva Reddy, learned counsel for the appellant/Accused No.5, has contended that in the absence of any finding as to the culpable rashness and negligence, recording conviction and sentence against the appellant/Accused No.5 is illegal, that almost the appellant underwent 59 days imprisonment and therefore, prayed to set aside the impugned judgment, as absolutely there is no direct evidence to conclude that the appellant/Accused No.5 had arranged the electrical trap.

13. The learned Public Prosecutor for the State of Telangana contended that the trial Court rightly found the appellant/Accused No.5 guilty of the charges leveled against him and since the same is based on legally acceptable evidence, there are no grounds to interfere and hence the appeal is liable to be dismissed. In support of his contention, the learned Public Prosecutor has relied on the judgment of the Apex Court in *Sushil Ansal v State*¹.

14. Considering the rival submissions, perusing the material on record, the point that arise for consideration is:

“whether the appellant/Accused No.5 arranged the alleged electrical trap in the agricultural field, knowing that such trap would cause death of human being or animal, if so, whether the act of the appellant/Accused No.5 would

¹ (2014) 6 SCC 173

constitute an offence punishable under Section 304-A IPC and under Section 39 of the Indian Electricity Act and liable for punishment accordingly?"

P O I N T:

15. Death of Seelam Venkatarami Reddy alias Chitti Reddy was caused due to electrocution is not in dispute and the said fact is supported by voluminous evidence, viz., Ex.P13-Postmortem certificate issued by the Doctor, Ex.P11-Inquest report and Ex.P9-Certificate issued by the Mandal Revenue Officer. Even otherwise, the learned counsel for the appellant/Accused No.5 did not dispute the death of the deceased due to electrocution. Therefore, this court need not decide the cause of death of the deceased.

16. The only question before this court is whether the cause of death of the deceased was due to rash and negligent act of the appellant/Accused No.5 and whether it is culpable negligence.

17. When the charge is framed against the appellant/Accused No.5 for the offence under Section 304-A IPC, it is the duty of the prosecution to prove that there is culpable rashness or negligence on the part of the appellant/Accused No.5 to record conviction for the offence under Section 304-A IPC.

18. Section 304-A deals with punishment for rash and negligent act. Negligence is not defined in Penal Code but it is defined as failure to meet the prescribed statutory standard is treated as unreasonable conduct amounting to negligence, because a reasonable man would not ignore precautions required by statute, and the accused cannot claim that

harm was unforeseeable, because the legislature has already anticipated it, degree of care expected from occupier, depends upon the fact situation in which the duty of care arises, and upon whether the person to whom the duty is owed. The appellant is the occupier and the owner of the property i.e., scene of offence, the responsibility of owner or the occupier is more than any ordinary person. Mere proof of negligence is not enough to fasten criminal liability and it is the duty of the prosecution to prove that the appellant who is charged for the offence punishable under Sec. 304-A of Penal code that he is guilty culpable negligence or rashness. The word "culpable rashness and negligence" is not defined anywhere in the Indian Penal Code. The Apex Court in *Mohammed Aynuddin @ Miyam vs. State of Andhra Pradesh*² defined what is culpable rashness and negligence while deciding a case of accident and held as follows:

"A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precautions guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

19. The above principle is reiterated in various judgments, such as in *G.Kumar v. State of A.P. Rep. by Public Prosecutor*³, *K.Nagaraju v. State of A.P.*⁴, and *K.Rajayya v. State of A.P. Rep.by Public Prosecutor*⁵.

² (2000) 7 SCC 72

³ 2009 (3) ALT (CrI.) 20 (AP)

⁴ 2009 (2) ALT (CrI.) 298 (AP)

⁵ 2010 (3) ALT (CrI.) 169 (AP)

20. In the earliest judgment in *Subbarao v. State*⁶ the Apex Court had an occasion to deal with what amounts culpable rashness and negligence and concluded that negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. There may be error of judgment when sudden breaks have applied. How much force is to be applied while applying the sudden breaks in a given situation may not be correctly estimated and there may be error of judgment.

21. The Apex Court in *Syed Akbar v State of Karnataka*⁷, laid down the same principle as laid down in *Subbarao v. State* (6 supra). While deciding an offence punishable under Section 304-A IPC the Apex Court held that culpable rashness means acting against risk without taking due care and caution. In the present facts, the appellant arranged electric trap to prevent entry of wild animals in to his land, to avoid destruction of crop raised in the land, thus, then appellant is conscious that electric trap would be dangerous to life of human beings or animals, therefore no further proof is required to establish culpable negligence or rashness.

22. Turning to the facts of the present case, the appellant/Accused No.5 is the owner of the land where an electrical trap is erected, directly connecting to main line with the help of binding wire with an intention to trap wild animals from entering into the agricultural fields. When the appellant/Accused No.5 is owner of the property and he is in possession of the property, the burden is upon him to prove that he has not arranged the said trap, in view of Section 110 of the Indian Evidence Act.

⁶ 1953 CrI.L.J 643

⁷ AIR 1979 SC 1848

23. According to Section 110 of the Indian Evidence Act, any person, who is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. It means, negative burden is placed on the prosecution.

24. However, the appellant/Accused No.5 admittedly is the owner of the land where the trap was arranged. When the appellant/Accused No.5 is in exclusive possession and enjoyment of the property where the electrical trap was arranged, he is deemed to have arranged the said trap to prevent entry of wild animals into the land. Therefore, the Court need not insist the prosecution to prove that the appellant/Accused No.5 alone has arranged electrical trap, since the burden of proof is on the appellant/Accused No.5, who failed to discharge the same initially by adducing any evidence or elicited anything in cross examination of PW's 1 to 8.

25. It is the main contention of the appellant/Accused No.5 that when there is no direct evidence pointing out that appellant/Accused No.5 alone has arranged the electrical trap, conviction cannot be recorded against him. This contention is without any substance, since the appellant is the owner of the land where the electrical trap was arranged and is in exclusive possession of the land. To prove the culpability of appellant, the prosecution examined as many as eight witnesses Pw 1 to 3 are the witnesses who spoke about electric trap arrangement by the appellant, in their cross examination, nothing was elicited and no suggestion was put to the witnesses that the appellant herein did not arrange the trap. Pw.5 is the M R O Wyra Mandal, issued Ex.P9 certificate to establish that the

appellant is the owner of an extent of Ac.2.27 gts., on survey No.205 where the scene of offence is situated. Assistant line man was examined as Pw.6 to speak about cause of death and finding wire around the leg of deceased. The cumulative effect of the evidence is that the cause of death was due to electrocution, and that the appellant arranged electric trap which dangerous to the life and due to his culpable rashness and negligence death was caused.

26. So far as the culpability of the appellant/Accused No.5 is concerned, the appellant/A5 has arranged the electrical trap thereby only to prevent wild animals to enter into the agricultural lands and to prevent damage to the property. When the appellant/Accused No.4 has arranged the electrical trap, he is expected to have knowledge about the consequences of arranging such trap that if any human being had a contact with the trap, it would endanger to his life.

27. Identical question came up before the Apex Court in *Sushil Ansal v State* (1 supra) and the Apex Court reviewed the entire law on the negligence and finally concluded that the occupier of the cinema theater who was gross negligent in operating the theater is guilty of offence punishable under sec.304-A of Indian Penal Code (*Uphaar cinema theater case*). In the present case the accused is aware about the consequences of contacting such electrical trap arranged to prevent entry of the wild animals into the land. It is sufficient to conclude that the negligence attributable to the appellant/Accused No.5 is culpable negligence and rashness, so, as to attract the offence punishable under Section 304-A IPC. Therefore, the trial court rightly recorded conviction against the appellant/Accused No.5, finding that act of the

appellant/Accused No.5 is culpable negligence and rashness, and having knowledge of ill-consequences that flow, in the event of arrangement of such electrical trap, the appellant/Accused No.5 has arranged the electrical trap, which resulted in death of the deceased.

28. In view of the above, I find no ground to reverse the finding recorded by the Court below finding the appellant/Accused No.5 guilty for such serious offence punishable under Section 304-A IPC. Consequently, the Criminal Appeal is devoid of merit and it deserves to be dismissed.

29. I find no perversity in the impugned judgment warranting interference with the conviction and sentence imposed by the trial court.

30. In the result, the Criminal Appeal is dismissed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 09.04.2018
Dsr

M.SATYANARAYANA MURTHY,J

