

\$~R-32

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

**Decided on: 05<sup>th</sup> September, 2018**

+ CRL.A. 553/2001 & CRL.M.A. 8758/2017

**YASHVIR SINGH**

..... Appellant

Through: Mr. S.K. Rai with Mr. Jyotinder  
Kumar, Advocates.

Versus

**STATE (DELHI)**

..... Respondent

Through: Mr. Ravi Nayak, APP for State  
with SI Ramesh Kumar, P.S.  
Sultan Puri.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The appellant was sent up for trial upon conclusion of investigation into first information report (FIR) no.512/98 of police station Sultan Puri under Section 304 of the Indian Penal Code (IPC) by report under Section 173 of the Code of the Criminal Procedure, 1973, presented in the court of the Metropolitan Magistrate on 05.11.1998. The case having been committed, he was brought before the court of Sessions (in sessions case no.132/98) and put on trial on the charge for offence punishable under Sections 304 Part-II and 308 of Indian Penal code, 1860 (IPC), the gravamen thereof being that, on 08.08.1998 at about 5.30 p.m., at his land near Railway Line, Hind Vihar, Prem Nagar-III, Delhi, within the jurisdiction of police station Sultan Puri, he had brought about the death of child named Dharamvir

and injuries to another child named Chhotu by committing acts and in the circumstances which rendered it to be a case of culpable homicide not amounting to murder in respect of former (deceased Dharamvir) and an attempt to commit culpable homicide not amounting to murder in respect of the latter (victim Chhotu). It may be mentioned here itself that the injuries which were suffered by the two victims, and as a consequence of which one of them (Dharamvir) died, were sustained on account of electrocution.

2. On the basis of evidence presented by the prosecution, the Additional Sessions Judge, by his judgment dated 13.07.2001, found the appellant guilty on the first charge also finding him guilty of having caused hurt by electrocution to Chhotu, treating it as a case of offence punishable under Section 324 IPC. By order dated 20.07.2001, the appellant was awarded rigorous imprisonment for five years with fine of Rs.2,000/- on the first count and rigorous imprisonment for one year with fine of Rs.500/- on the second count.

3. The appeal at hand was presented to assail the judgment of conviction and the order of sentence.

4. The brief background facts may be noted at this stage. It is alleged that the appellant and the victim children, as indeed their respective families, had been residents of hutments or shanties (*jhuggi jhopri*) named Hind Vihar abutting Railway Line in the area of Prem Nagar-III, Delhi, alongside which, a parcel of land is located. The said place where the incident (which is subject matter of this case) occurred is described as the agricultural field, owned and in

occupation and use of the appellant. There is evidence to show that the said agricultural field was bounded by a fence. The local residents allegedly would throw garbage into the said agricultural field of the appellant over which he would feel perturbed.

5. On 08.08.1998, the appellant was allegedly in the process of setting the garbage littered in his field on fire and had taken the help of the children of the colony including the deceased Dharamvir (aged 10 years) and victim Chhotu (aged 7 years). It is alleged that while the children were assisting him in collecting the garbage including plastic bags etc for being put into the fire, the appellant, standing near a tree on the side of the field, had connected the fencing with a wire through which electric current was running. It is alleged that the two victim children came in contact with the said fencing and got electrocuted in the process. This incident was allegedly seen by a local resident Suresh (PW-1) who tried to rescue the children with the help of a wooden pole. He was able to get the younger child Chhotu freed from the electrified fence, but Dharamvir remained stuck. It was eventually revealed that Dharamvir had died due to electrocution on the spot. Chhotu was taken to hospital for medical aid.

6. Information was relayed to the police station vide DD no.15A (Ex. PW3/A). The case was inquired into and later investigated by ASI Dharam Prakash (PW-10), who was assisted in the said process by Constable Shri Krishan (PW-8). On the basis of statement (Ex. PW1/A) of Suresh (PW-1), and endorsement (Ex. PW3/B) of ASI Dharam Prakash (PW-10), the Investigating Officer (IO), FIR (Ex.

PW3/C) was registered. The scene was got photographed by the IO with assistance of Jaiveer Singh (PW-2) who developed the positives and presented the same (vide ex. PW2/18 to 34). The IO also prepared site plan (Ex. PW10/A) depicting the scene as found by him upon his arrival. The MLC (Ex. PW2/A) of victim Chhotu, and post-mortem examination report (Ex. PW9/A) of deceased Dharamvir, would confirm electrocution to be the cause of injuries which proved fatal for the latter.

7. There is no doubt or dispute as to the fact that the two victim children had suffered injuries due to coming in contact with live electric current. There is ample evidence to show that they suffered electrocution on account of each of them having come in contact with fencing around the field of the appellant.

8. But the core question is as to whether the appellant was responsible for the electric current running through the fencing around his field.

9. Four witnesses for the prosecution were crucial for bringing home the charge against the appellant, they being the first informant Suresh (PW1), Shatrughan (PW-4), who is the father of the deceased child, Jahur (PW-5) presented as another eye witness, Chhotu (PW-6), the injured child who mercifully survived, and the investigating officer (PW-10). A close scrutiny of the evidence of these witnesses would reveal an admitted position that the *jhuggi jhopri* locality did not have any electricity supply officially brought for use of the residents. The first informant (PW-1), father of the deceased child PW-4 and the

investigating officer (PW-10) admitted during the course of their respective depositions in the court that the electricity supply had been arranged by the local residents – the first witness describing the persons responsible vaguely as “others” – unauthorisedly by tapping it from an electricity pole across the railway line, the wire used for the purpose running through the field. The investigating officer admitted during his cross-examination that he had made no probe as to the identity of the person (s) who had arranged such unauthorized and illegal extraction of electric energy by extending a wire connecting the pole across the railway line with the hutments.

10. Though PW-1, PW-4 and PW-5 would speak about the threat extended by the appellant in the past of electrifying the fence around his agricultural field to deter the local residents from entering into the said area to dump garbage, it is clear from the record that there has been no report lodged to this effect prior to the incident in question. The allegations against the appellant on such score came for the first time after the fatal accident. There is no specific date on which such threats were extended by the appellant.

11. PW-4, father of the deceased child, himself was not present when the incident occurred. Even he deposed about the role of the appellant in the events leading to the occurrence. He was basing it on the information statedly gathered from the local residents. In this view, his testimony on such account is nothing but hear-say which cannot be given any credence.

12. PW-5, going by the narration of events forming part of his testimony, was also not present nor had seen the appellant responsible for specific act of commission or omission leading to the electrocution. His attention admittedly had been drawn towards the field of the appellant when he heard the cries of the two boys who had come in contact with the electrified fencing.

13. Thus, the evidence of PW-1 (first informant) and of PW-6 (victim / insured child) were most crucial. The evidence of the latter – recorded in the court on 25.07.2000 – respecting events that had occurred on 05.11.1998 when he was only seven years old, however, would not inspire confidence. He spoke about the petitioner having first asked for his help and that of the deceased Dharamvir in putting the garbage into the fire and thereafter having placed his hand and that of Dharamvir on the wire of the fence around the fields leading to the electrocution. This was never the case of the prosecution. This has been alleged by the first informant Suresh (PW-1) either in the FIR or in the court testimony. Possibly facts and fiction (based on imagination of the growing child) have got mixed up and this led to such statement being given by the child in the court attributing a role to the appellant more pro-active than what was initially stated. Strangely, the Additional Public Prosecutor presenting the case in the trial court made no effort to seek an explanation for such wholly discrepant version appearing which, the cross-examination by the defence, later demonstrated to be in serious conflict with the statement of the witness during investigation.

14. The defence of the appellant has been that of denial. According to him, unauthorized extraction of electrical energy from across the railway lines by an illegal wire running through the fields had been arranged by the local residents and it is the said electric wire which had led to the fatality, the boys having come in accidental contact therewith. It is his defence that he was being made a scape goat without any role on his part. His defence cannot be lightly brushed aside.

15. If what PW-1, the eye-witness, says is to be believed, the appellant himself had solicited the help of the children of the locality in clearing his field of the garbage that had been thrown by it being collected and put into fire. Going by the sequence narrated in the case by the witnesses, the children were busy in the field running the said errand for and at the instance of the appellant. They were actually rendering help to him. There is no plausible reason, unless a case of past enmity is brought out, to expose the children to the risk of electrocution by connecting the fencing with the live wire. There is no doubt, and no witness speaks to that effect, that the appellant had no reason to be inimical particularly towards the two children who suffered the injuries, they being persons present on his field for his help at the relevant point of time.

16. The investigating officer did not care to collect evidence to find out the source of the electrical energy running in the wire which the appellant had allegedly connected to the fencing. This was crucial not only to confirm the word of PW-1 about the core part of the incident

but also to verify the previous history. There is nothing on record to show that any live wire was running from the source over or to which the appellant had control or access so as to facilitate it to be brought in contact with the fencing around his field. In this scenario, the only wire carrying electric current which was found running through the field was the one which had been arranged by the local residents for illegal extraction of electric power from across the railway lines.

17. On the above facts and in the circumstances, this court finds it difficult to accept the testimony of PW-1 about the role attributed to the appellant. Serious doubts persist including on account of highly deficient and unprofessional investigation which was conducted. The benefit will have to go to appellant.

18. Thus, the appeal is allowed. The impugned judgment dated 13.07.2001, and order on sentence 20.07.2001, of the Session court are hereby set aside. The appellant is acquitted of the charges framed against him. He shall be released from custody forthwith. This disposes of the pending application as well.

19. A copy of this judgment shall be sent to the Superintendent Jail for his information and needful action.

**R.K.GAUBA, J.**

**SEPTEMBER 05, 2018/yg**