

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.144 of 2018

Order Reserved on : 2.4.2019

Order Passed on : 26.6.2019

1. Bhagwati Adil, S/o Late Jagmohan Lal Sharma (Adil), aged about 61 years, R/o Village Daganiya, Police Station Patan, District Durg, Chhattisgarh
2. Arun Kumar Verma, S/o Late Tula Ram Verma, aged about 57 years, R/o Village Beloudi (Gabdi), Police Station Ranitarai, District Durg, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through Station House Officer, Police Station Patan, District Durg, Chhattisgarh

--- Respondent

For Applicants	:	Shri Sudhir Verma, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Vide judgment dated 25.10.2017 passed in Criminal Case No.860 of 2013, the Judicial Magistrate First Class, Patan, District Durg convicted the present Applicants along with other co-accused persons, namely, Rajendra Kumar Verma and Narayan Murti Tripathi for offences punishable under Sections 338, 304A, 34 of the Indian Penal Code and sentenced them with rigorous imprisonment for 1-1 year for both the offences. Against the judgment of conviction and sentence dated 25.10.2017, the present Applicants and other co-accused persons Rajendra Kumar Verma and Narayan Murti Tripathi preferred separate appeals before the Court of Session at Durg. The appeal preferred by co-

accused Rajendra Kumar Verma and Narayan Murti Tripathi was registered as Criminal Appeal No.149 of 2017 and the appeal preferred by the present Applicants was registered as Criminal Appeal No.150 of 2017. Both the appeals were decided by a common judgment dated 23.1.2018 by the Appellate Court/Additional Sessions Judge, Durg. Vide the impugned judgment dated 23.1.2018, the Additional Sessions Judge, Durg allowed the appeal preferred by co-accused Rajendra Kumar Verma and Narayan Murti Tripathi and acquitted them of all the charges framed against them. However, the Additional Sessions Judge affirmed the conviction and sentence of the present Applicants under Section 304A of the Indian Penal Code, but in place of their conviction under Section 338 of the Indian Penal Code the Additional Sessions Judge altering the conviction, convicted them for the offence punishable under Section 337 of the Indian Penal Code and sentenced each of them with fine of Rs.500/- with default stipulation.

2. Facts of the case, in brief, are that at the relevant time, Applicant/accused Bhagwati Adil was working as an Assistant Lineman and Applicant/accused Arun Kumar Verma was working as a Helper. Co-accused Narayan Murti Tripathi was also working as an Assistant Lineman and co-accused Rajendra Kumar Verma was also working as a Helper. As per the prosecution story, on 10.9.2012, maintenance work of 11 KV Transformer was going on at Village Funda. For this maintenance work, the present Applicants and the other acquitted co-accused persons were engaged by the concerned officials. Labours Uttam Patel (PW4), Krishna Kumar Dhimar (deceased) and two other labours, who were working with electrical contractor Chandra Shekhar Sahu

were assisting the accused persons. Allegedly, these persons were called by the accused persons without any authority. Allegedly, both deceased Krishna Kumar Dhimar and Uttam Patel (PW4) were working on the pole on being asked by the accused persons. At that time, electric current started flowing in the lines and as a result of which both deceased Krishna Kumar Dhimar and Uttam Patel (PW4) fell down. Deceased Krishna Kumar Dhimar died and Uttam Patel (PW4) sustained injuries. On a report, the police conducted an inquiry, registered crime and on completion of the investigation, submitted a charge-sheet against all the accused persons. The Trial Court and the Appellate Court convicted and sentenced the accused persons as mentioned in the first paragraph of this order. Hence, this revision by the Applicants.

3. Learned Counsel appearing for the Applicants submitted that from the evidence available on record, it is clear that labours deceased Krishna and Uttam Patel and other two labours were not called by the present Applicants or by acquitted accused persons. Both Uttam Patel (PW4) and Lokesh Dhiwar (PW5) have categorically admitted the fact that Uttam Patel and deceased Krishna were working at Village Funda. At that time, all the accused persons were present at Village Devada. The AV Switch of the current, which was shut, was installed at Village Devada. It is stated by Lokesh Dhiwar (PW5) that AV Switch was switched on by Applicant/accused Arun Kumar Verma, but there is nothing on record to show that at that time, Applicant/accused Arun Kumar Verma was having knowledge that at Village Funda, where work was going on, Uttam Patel and deceased Krishna were still working there. Therefore, no negligence is established on the part of Applicant Arun Kumar Verma. It is further submitted that the

work was going on at Village Funda and both the present Applicants, as stated by Uttam Patel (PW4), were not present at Village Funda. Therefore, no case of negligence is made out against any of the present Applicants. Thus, the finding of both the Courts below are not in accordance with the evidence available on record. Therefore, the findings are perverse and liable to be set aside.

4. Learned Counsel appearing for the State supported the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the records with due care.
6. The prosecution has examined as many as 14 witnesses in support of its case. Junior Engineer Rupesh Kumar Joshi (PW11), in whose supervision the work of maintenance was going on, has deposed that without informing him, all the accused persons had called the labours. Assistant Engineer Anil Prasad Soni (PW13) has also deposed that without any direction all the accused persons had engaged the labours in the work. But, contrary to this, electrical contractor Chandra Shekhar Sahu (PW2) and his Supervisor Shahnawaj Alam (PW1) have stated that demand of labours was made by Assistant Engineer Soni and then only they had sent the labours. Their above statements have not been rebutted during their cross-examination. Thus, the Appellate Court has rightly arrived at the conclusion that all the labours were called by Assistant Engineer Soni not by any of the accused persons.
7. It is not in dispute that at the relevant point of time, maintenance work was going on at Village Funda. As stated by Lokesh Dhiwar

(PW5), when the work started, acquitted accused Rajendra Kumar Verma switched off the AV Switch installed at Village Devada. Though in paragraph 8 of his examination, Lokesh Dhiwar (PW5) has stated that later on Applicant/accused Arun Kumar Verma had switched on the AV Switch and due to that Uttam Patel and deceased Krishna had sustained electric current. As stated by Lokesh Dhiwar (PW5), at that time, he was present at Village Devada. Allegedly, at that time, both Uttam Patel and deceased Krishna were working at Village Funda. At the time when Applicant Arun Kumar Verma switched on the AV Switch at Village Devada, at that time also, Uttam Patel and deceased Krishna had climbed up on the pole in question and were working on that pole situated at Village Funda and this fact was within the knowledge of Applicant/accused Arun Kumar Verma, there is no evidence available on record to this effect. Sole eyewitness/injured witness Uttam Patel (PW4), during his cross-examination, in paragraph 6, has categorically admitted the fact that at the time when they were working at Village Funda, none of the accused persons was present there. Though, later on, this witness has deposed that two accused persons were present at Village Devada and remaining two accused persons were present at Village Funda, but, which two accused persons were present at Village Funda has not been stated by him. Both the present Applicants/accused were present at Village Funda has also not been specifically stated by him. Lokesh Dhiwar (PW5), in paragraph 15 of his cross-examination, has categorically stated that all the accused persons, after the incident, had proceeded further along with them to Village Funda and before their arrival at Village Funda, the incident had already taken place at Village Funda. Thus, from the above also, it is

established that at the time when the incident took place at Village Funda, none of the accused persons were present at the spot at Village Funda.

8. From the evidence available on record and the above discussion, it is well established that due to electrocution, deceased Krishna died and Uttam Patel sustained injuries. There is no evidence on record to establish that these two labours or any other labour were called or engaged by any of the accused persons. Contrary to this, it is stated by Shahnawaj Alam (PW1) and Chandra Shekhar Sahu (PW2) that the labours were called by Assistant Engineer Soni. From the evidence available on record, it is also well established that at the time when the incident took place, the present Applicants and other acquitted co-accused persons were not present at the spot at Village Funda. Rather, they were present at Village Devada. From the statement of Lokesh Dhiwar (PW5), it is only established that the AV Switch installed at Village Devada was switched on by Applicant/accused Arun Kumar Verma, but there is no evidence on record to establish that at that time Uttam Patel and deceased Krishna had climbed up on the pole in question at Village Funda and were working on the pole was within the knowledge of Applicant/accused Arun Kumar Verma. Apart from this, no evidence is available on record on the basis of which the present Applicants could be connected with the offence in question. Thus, the finding of both the Courts below are not in accordance with the evidence available on record and, therefore, they are held to be perverse. Thus, no offence is proved against the Applicants beyond reasonable doubt.
9. Consequently, the revision is allowed. The impugned judgment of

conviction and sentence is set aside. The Applicants are acquitted of the charges framed against them.

- 10.** Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE