

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 233 of 2013**

Rameshwar Gond S/o Shri Dhirsingh Gond Aged About 35 Years R/o Village Ganjar, PS and Tah. - Bagbahara, Distt. Mahasamund C.G., Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through PS Bagbahara, Distt. Mahasamund C.G. , Chhattisgarh.

---- Respondent

For Appellant	:	Shri J.A. Lohani, Advocate.
For Respondent/ State	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****16/05/2019**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 18.1.2013 passed by the Learned Special Judge (Electricity Act, 2003), Mahasamund, Chhattisgarh in Special Criminal Case No. 1 of 2011 whereby and whereunder the learned Special Judge after holding the appellant guilty for the offences under Section 304(A) of the Indian Penal Code and Section 135(1)(a) of the Electricity Act, 2003, sentenced him to undergo rigorous imprisonment for 1 year and 1 year and to pay fine of Rs.10,000/- and Rs.10,000/-, in default of payment of fine, to further undergo additional simple imprisonment for 3 months and 3 months, respectively with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, the appellant took an unauthorized connection directly from the electric pole to his place of residence and one wire of the same had broken and fell down. The incident is of 9.12.2010. Ravikant, who is the son of complainant – Jagat Chandrakar who had been to the place of incident, came in contact with the live wire of the electric connection and was electrocuted to death. FIR Ex. P/1 was lodged.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court.

(5) The appellant was charged for the offences under Sections 304(A) of the IPC and Section 135(1)(a) of the Electricity Act, 2003. He denied the charges and prayed for trial. In order to prove the guilt of the appellant, the prosecution examined 11 witnesses. The appellant was examined under Section 313 of the Cr.P.C., in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. Two witnesses were examined in defence.

(6) After affording opportunity of hearing to both the parties, learned

trial Judge convicted and sentenced the appellant as aforementioned.

(7) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(8) Learned counsel appearing on behalf of the appellant submits that on the basis of the evidence produced by the prosecution it was a simple case of accident and that would have invited only a civil suit for compensation, because the incident of protecting the electric wire was not in the control of the appellant. Apart from that, it was not a connection by hooking directly from the electric pole and on the contrary, it was an authorized connection regarding which, T.R. Gajbhiye (PW-6) has submitted in his cross-examination that the appellant was provided with single bulb electric connection, therefore, the negligence, if any, would have been on the part of the electricity department and not on the part of the appellant. Hence, it is prayed, that on these grounds, the appeal may be allowed and the appellant may be acquitted of the charges framed against him. In the alternative, it is prayed that if this Court is not inclined to allow the appeal and acquit the appellant, looking to the detention of the appellant in jail, his sentence of imprisonment be reduced to the period of custody already undergone by him.

(9) Per contra, learned counsel for the respondent/ State opposed the prayer and submissions. It is submitted that the prosecution has proved its case beyond reasonable doubt. Hence, there is no scope for interference in the impugned judgment.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) The point in issue in this appeal is whether the prosecution has proved the charges against the appellant, on the basis of the evidence beyond reasonable doubt?

(12) There is no dispute that the son of complainant – Jagat Chandrakar (PW-1) has died due to electrocution from the same wire which was extended as electric connection from the electric pole to the house of the appellant and the same had broken down and it was the reason that unfortunately the child of Jagat Chandrakar (PW-1) came into contact and died on the spot. Therefore, there is no need to discuss on the evidence of the prosecution on this point. The responsibility and negligence of the appellant is the only issue which has to be considered. Therefore, if there is evidence to show that the connection from electric pole to the house of the appellant is illegal then it can be regarded as ground to presume that it was the complete responsibility of the appellant to maintain the said illegal connection and avoid any mishap.

(13) T.R. Gajbhiye (PW-6) is the Junior Engineer of CGSPDCL. He has stated that he inspected the place of incident where he saw the service wire had fallen down on the ground, which was the reason of the electrocution in the death of the son of complainant - Jagat Chandrakar, vide Panchanama Ex. P/5. He had reported the situation on the spot and has clearly stated in Ex. P/5. On the basis of Ex. P/5, the appellant was not provided with any electric connection in his house. In cross-

examination, in paragraph 7, he has admitted that the appellant was provided with single bulb connection in his old house, but he has denied that same kind of connection was provided in his new house also. On this basis, it is clearly made out that the appellant was having illegal electric connection and on this ground it cannot be said that electric department had any responsibility to maintain the same. Therefore, the appellant was the person who was wholly and solely responsible for the incident so as to avoid any mishap, in which he has failed, therefore, the same has resulted in the death of the child.

(14) After due consideration of the entire evidence and on the basis of the discussions made herein-above, the conviction against the appellant cannot be interfered with. However, after considering the facts and circumstances of this case, I feel inclined to reduce the sentence of R.I. imposed upon the appellant. Therefore, this appeal is allowed in part and the conviction of the appellant recorded by the trial Court is upheld. However, the sentence imposed upon the appellant for the offence under Sections 304(A) of the IPC and Section 135(1)(a) of the Electricity Act, 2003 is reduced to the period of detention already undergone by him in jail and the fine sentence awarded by the trial Court is maintained as it is.

(15) Accordingly, the appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE