

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1077 of 2019**Order reserved on : 01.10.2019Order delivered on : 04.10.2019

- Nirakar Ambust S/o Vasudev Prasad Ambust, aged about 62 years, R/o village - Pakargaon, P.S. - Pathalgaon, District Jashpur (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh Through : Station House Officer, P.S. Pathalgaon, District Jashpur (C.G.)

---- Respondent

For Petitioner	:	Shri Sanjay Agrawal, Adv.
For Respondent/State	:	Shri Akhtar Hussain, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****04/10/2019**

01. Challenge in this revision is to the order dated 27.08.2019 passed by the Additional Sessions Judge, Patthalgaon, District Patthalgaon in Sessions Trial No.23/2019, whereby the learned trial Court has framed charges under Section 304 IPC against the applicant.

02. Brief facts of the case are that on 19.01.2019 at about 4.30 AM, dead body of deceased Kadri Beck was found in front of the house of complainant who is son of deceased, and

beside the house of applicant. During investigation, it revealed that the deceased died due to electrocution when she came into contact of electric wire fixed by the applicant for lighting his under construction house. Based on this, FIR was registered against the applicant, and after completion of investigation, charge sheet has been filed against the applicant before the trial Court. On 27.08.2019, the learned trial Court framed charge against the applicant under Section 304 IPC. Hence, this revision.

03. Learned counsel for the applicant submits that there is no evidence on record that the electric wire was attached with the house under construction. The place where the incident took place is an open place near the house of the applicant and as such no case is made out against the applicant under Section 304 IPC. He further submits that the applicant has been falsely implicated in the case as the deceased died due to her negligence. He also submits that *mens rea* is an essential part for constituting the crime under Section 304 IPC, which is completely missing in this case. At the stage of Section 227/228 of Cr.P.C., the Court is required to evaluate the material and documents on record with a view to find out, if the facts emerging therefrom, taken at their face value, disclosed the existence of all ingredients constituting the alleged offence. It is next submitted that the applicant has simply fixed one electric connection for lighting his under construction house and the deceased came into contract of

the live wire, which is only an accident and not as a result of inadvertent act of the applicant, therefore, the impugned order is liable to be set aside. In support of his argument, he placed reliance on the decision of Hon'ble Supreme Court in the matter of **State of Rajasthan Vs. Chhittarmal**¹ and this Court's order **dated 13.09.2011** passed in **CRR No.255/2011 (Rajendra Sharma and another Vs. State of Chhattisgarh.)**

04. On the other hand, learned State counsel supporting the impugned order submits that the learned trial Court, considering the facts and circumstances of the case, found the ingredients of Section 304 IPC and charges have been framed accordingly. In support of his contention, he placed reliance on the decision of Delhi High Court in the matter of **Ram Karan Vs. State (Delhi Admn.)**². t

05. I have heard the learned counsel for the parties and perused the record.

06. It is clear from the merg intimation, statements of the witnesses and the seizure memos that during investigation, electric wire and naked wire used in centring work were seized from the place of incident 'A-1' i.e. the house of the applicant.

07. Section 304 IPC relates to culpable homicide not amounting to murder, which reads as under:-

“304. - Punishment for culpable homicide not amounting to murder.- Whoever commits culpable

¹ (2007) 10 SCC 792

² 2010 CRL.L.J. 966

homicide not amounting to murder shall be punished with ¹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

08. This High Court in the matter of **Rajendra Sharma** (supra), while dealing with identical issue, has held in para 9, which reads thus:

“(9) *In case on hand, the allegations are that the applicants, called the deceased for repairs of the electricity connection of their house and they also forced him to climb on the electricity pole. This clearly shows that the deceased never climbed on the pole to commit suicide or the deceased was having an intention to commit suicide. In fact, there is no material to establish that the death of the deceased was a “suicidal death” and nothing can be presumed in regard to the commission of the suicide by the deceased. As such the basic constituent of the offence u/s 305 IPC i.e. “suicidal death” is lacking in the matter and for the said reason, prima facie, an offence u/s 305 IPC would not be made out.*

09. Learned counsel for the applicant placed reliance in the

matter of **State of Rajasthan** (supra), where the accused alleged to have fixed live naked electricity wire on the drain for supplying water which was in between the fields of the deceased and the accused with intention of killing him due to enmity between them, rather the contention of accused was that the wire was installed to prevent the entry of wild animals. The Hon'ble Supreme Court held that neither intention nor knowledge to cause death established from circumstantial evidence and defence version found more probable and upheld the order of High Court altering the conviction from Section 302 to 304-A IPC.

10. In the instant case also, it is clear from the statements of the witnesses and seizure memo that the applicant, in negligent manner, fixed live naked electricity wire in his house and deceased died due to electrocution. It has not come in the evidence that there was enmity between the applicant and the deceased, and to eliminate the deceased he has fixed the live naked electricity wire in his house. Even, the crime detail form shows that there is CC road in between the house of the deceased and the applicant, thus, intention is far behind in this case. As such the basic constituent of the offence under Section 304 IPC i.e. "culpable homicide not amounting to murder" is lacking in the matter and for the said reason, prima facie, an offence under Section 304 would not be made out rather, the charges under Section 304-A appears against the applicant.

11. In view of the above discussion, the learned trial judge committed material irregularity while framing the charges under Section 304 IPC. The impugned order, therefore, cannot be sustained and the same deserves to be set aside.

12. Accordingly, the revision is allowed. The impugned order of framing the charges under Section 304 IPC and the charges framed under Section 304 IPC as such, are quashed and the matter is remitted to the concerned Court for framing the charges under appropriate section against the applicant in accordance with law.

Sd/-

(Rajani Dubey)
JUDGE