THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.424 OF 2011

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/accused aggrieved by the judgment, dated 25.03.2011, rendered in Sessions Case No.149 of 2010 on the file of Sessions Judge, Adilabad, whereby and whereunder, the learned Sessions Judge found the appellant/accused guilty of the offence punishable under Section 304-II IPC and accordingly, he was convicted and sentenced to undergo simple imprisonment for a period of three years and to pay fine of Rs.500/-, in default to suffer simple imprisonment for three months.

2. Heard the learned counsel for the appellant/accused and learned Additional Public Prosecutor, appearing for the respondent-State. Perused the record.

3. Learned counsel for the appellant/accused vehemently contended that the Medical Officer was not examined in this case; that since the subject death was not proved, on that score, the appellant/accused is entitled for benefit of doubt. It is also contended that the subject land, where electrocution had taken place, do not belong to the appellant/accused; that there is no evidence to prove the guilty of the appellant/accused for the offence punishable under Section 304-II IPC.

4. Learned Additional Public Prosecutor appearing for the respondent-State supported the impugned judgment passed by the Court below.

5. As seen from the entire material placed on record, P.Ws.1 to 8 were examined and Exs.P.1 to P.10 were marked. D.W.1 was examined on behalf of defence.

6. Admittedly, though Ex.P.9-postmortem report was marked, no Doctor was examined. Whether the subject death was caused due to electrocution is a matter of determination. Therefore, the evidence of Doctor is essential. When Doctor is not examined, it is not appropriate to examine the merits and demerits of the case and record a finding.

7. In view of the circumstances of the case, since Doctor has not been examined, the judgment, dated 25.03.2011, passed in Sessions Case No.149 of 2010 on the file of Sessions Judge, Adilabad, convicting the accused for the offence under Section 304-II IPC is set aside and the Sessions Case No.149 of 2010 is restored to the file of Sessions Judge, Adilabad, for examination of Doctor concerned to prove Ex.P.9-postmortem report in accordance with law. In case the Doctor concerned is not available, Ex.P.9-postmortem report be proved by resorting to other mode.

8. With these observations and findings, the Criminal Appeal is allowed setting aside the judgment, dated 25.03.2011, in Sessions Case No.149 of 2010 on the file of Sessions Judge, Adilabad, and the matter is remanded to the Court below with a direction to examine the concerned Doctor to prove Ex.P.9-postmortem Report and pass the Judgment on merits in accordance with law, expeditiously.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

FEBRUARY 06, 2019
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THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.424 OF 2011

FEBRUARY 6, 2019

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