

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 862 of 2008

- Ajit Kumar Verma S/o Bhodhiram Verma, Aged about 40 years, Occupation – Teacher (Private School), R/o Village Jarauda, Thana – Dharsiva, District Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through – The District Magistrate, P.S. Dharsiva, Raipur, District Raipur (C.G.)

---- Respondent/State

For Appellant	:	Shri Syed Imtiaz Ali, Advocate
For Respondent/State	:	Dr. Veena Nair, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

18.06.2020

- This appeal arises out of the judgment of conviction and order of sentence dated 15.09.2008 passed by the Special Judge (Electricity Act) and First Additional Sessions Judge, Raipur (C.G.) in Special Criminal (Electricity) Case No. 25 of 2006, whereby Appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 304A of Indian Penal Code (for short 'IPC')	R.I. for one year and pay a fine of Rs.500/-, in default of payment to further undergo additional R.I. for one month.

- Prosecution case in brief is that merg intimation (Ex.-P/1) was lodged by PW-1 Shanti Bai on 25.06.2005 at about 10:30 am informing the police that on the same day at about 07:00 am, her mother Bhukin Bai (since deceased), aged about 60 years went to the field where the farm/field of appellant Ajit Kumar Verma is situated which was covered by barbet wire. At about 08:30 am, PW-1 alongwith two children went to the field and met her mother. She mentioned in the merg intimation that one cow died in the field of the appellant and they called Gowri (the sister of appellant) who was also

on the field. When Gowri and another lady touched the cow to see whether it is dead or alive, they came in contact with the current, thereafter they both ran away from the spot. Seeing this deceased Bhukin Bai and her daughter Shanti alongwith two children also ran away from the spot. While running the deceased fell down on the barbet wire on which the current was flowing, Shanti Bai tried to pick her mother up however she also sustained electric shock. When Shanti shouted, two boys came there with bamboo to rescue the deceased, but the deceased was unconscious and died on the spot.

3. On the basis of merg intimation (Ex.-P/1), the investigating officer reached the place of occurrence, gave notice (Ex.-P/2) to the Panchas and prepared inquest (Ex.-P/3) on the body of the deceased. The dead body of the deceased was sent for postmortem examination to Medical College Hospital, Raipur, where the postmortem examination was conducted by Dr. Ulhas Gonnade (PW-10), who prepared his report Ex.-P/7. As per postmortem report (Ex.-P/7), PW-10 opined that cause of death was due to asphyxia as a result of electrocution and duration of death was within 24 hours.
4. After merg inquiry, FIR (Ex.-P/6) was registered at police station Dharsiwa, Raipur under Crime No. 218/05 on 05.07.2005 by PW-8 Constable Santosh Kumar Dhruw. During investigation, GI wire (length about 76 meters) and black coloured service wire (length about 228 meters) were seized from PW-13 Dayaram Sahu who is an Assistant Lineman of the CSEB Department vide Ex.-P/5 on 12.07.2005. Spot map (Ex.-P/11) was prepared by PW-14 Rajesh Kumar Sahu. One report was submitted by Chhattisgarh State Electricity Board vide Ex.-P/10. One written complaint was submitted before the Judicial Magistrate, First Class, Raipur by Junior Engineer, Chhattisgarh Electricity Board, Saaragaon vide Ex.-P/14 informing that the appellant took illegal electricity connection from the electric pole and this was also informed to the police. Case diary statements of the witnesses namely Digaram (Ex.-P/4), Shanti Bai, Harish Nishad, Samaru Sahu, Sodhan Kumar Sahu,

Kaushaliya Yadav, Narendra Verma, Gowri Bai, Devnath Sahu, Ishwar Prasad and Bodhiram were recorded by the police during investigation.

5. After completion of usual investigation, the charge-sheet was filed against the accused/appellant and the Special Judge (Electricity Act) framed the charges under Section 135 (1) (a) of the Electricity Act, 2003 and Section 304-A of the IPC against him. The appellant denied the charges framed against him and prayed for trial.
6. In order to prove guilt of the accused/appellant, the prosecution examined as many as 17 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. The appellant was stated that he did not take any electricity connection whereas his father took the electricity connection from the concerned electricity department as Service No. 110028 in the year 1980 and he was not the owner or possession holder of the land/field. The appellant examined one defence witness namely Pawan Kumar Singh, Junior Engineer of CSEB, Saaragaon, as DW-1 in defence.
7. The Special Court (Electricity Act) after hearing the counsel for the parties in the matter and considering the material available on record, by the impugned judgment convicted and sentenced the appellant in the manner as described in para-1 of this judgment, hence this appeal.
8. Shri Syed Imtiaz Ali, learned counsel appearing on behalf of appellant, submits that the appellant had not taken the electricity connection in his name and the same was in the name of his father Bhodhi Ram Verma. He further submits that the appellant is not an agriculturist and actual possession holder of the said land whereas he is by profession a teacher and his father took the legal electricity connection from the CSEB in the year 1980 and there is no any connection of the appellant with the crime in question. He also submits that only on the ground that the appellant is son of Bhodi Ram Verma and he is living with his father, he was falsely implicated in this case. He submits that no any *mens rea* was proved against the

appellant by the prosecution that he was involved in the death of deceased who died due to electrocution in the field of appellant's father, nor the illegal electric connection was taken by the appellant nor he did any rash or negligent act which resulted in death of deceased. Learned counsel for the appellant lastly submits that the appellant's father who had taken the electric connection from the CESB, was not impleaded as an accused in this case. However, his father had not taken illegal electric connection from the electric-pole of the Electricity Department. Therefore, the appellant was acquitted by the Special Court (Electricity Act) from the charge under Section 135 (1) (a) of the Electricity Act and wrongly convicted and sentenced under Section 304-A of IPC.

9. Dr. Veena Nair, learned Deputy Advocate General appearing on behalf of the State, vehemently opposed the contention made by the learned counsel for the appellant and submits that as per evidence, the appellant was taking care of the field of his father as his son and due to not maintaining proper electric line obtained by his father, the incident happened and Bhukin Bai died due to electrocution. She also submits that looking to the statements of PW-1 Shanti Bai, PW-4 Smt. Koushaliya and other witnesses, this fact is proved by the prosecution that the appellant was taking care of field of his father, therefore, the Special Court (Electricity Act) has rightly convicted and sentenced the appellant under Section 304-A of IPC by its judgment impugned and there is no illegality or infirmity in the same warranting interference by this Court.
10. Heard learned counsel for the parties and perused the records of the Sessions Court.
11. It is not disputed by the learned counsel for the parties that deceased Bhukin Bai died due to electrocution and it is also proved by Ex.-P/7 postmortem report of PW-10 Dr. Ulhas Gonnade and Ex.-P/3 inquest report which remain

uncontroverted. Ex.-P/1 merged intimation lodged by PW-1 Shanti Bai was proved and the same was not challenged. Therefore, looking to the postmortem report (Ex.-P/7) of Doctor PW-10 and inquest report (Ex.-P/3) it is proved beyond reasonable doubt that deceased Bhukin Bai died due to coming in contact with live electric wire at the place of occurrence on 25.06.2005 and cause of death of Bhukin Bai was electrocution.

12. For the offence under Section 304A of IPC, the following essential ingredients are required to be proved by the prosecution beyond reasonable doubt:

- (i) Death of a person.
- (ii) Death was caused by accused during any rash or negligence act.
- (iii) Act does not amount to culpable homicide.

And to prove negligence under Criminal Law, the prosecution must prove:

- (i) The existence of duty.
- (ii) A breach of the duty causing death.
- (iii) The breach of the duty must be characterized as gross negligence.

13. It is not disputed by the prosecution that by profession the appellant is a teacher and that fact is also proved by arrest memo Ex.-P/12. It is also not in dispute that the appellant was not the owner of the land where the incident happened. As per evidence of DW-1 Pawan Kumar Singh who is the Junior Engineer of the concerned Electricity Department, he proved the document Ex.-D/1 to Ex.-D/6 which show that electric service connection No. 110028 is in the name of Bhodhi Ram Verma (father of the appellant) and the same was allotted him in the year 1980. Therefore, the offence under Section 135(1) (a) regarding theft of electricity was not proved against the appellant and the Special Court has rightly acquitted the appellant from the said charge. Thus, the electric connection taken by the father of the appellant is a legal connection which was proved by DW-1 Pawan Kumar Singh who is

the officer of CSEB, Saaragaon, District Raipur through documents Ex.-D/1 to Ex.-D/6.

- 14.** Further, the prosecution has also failed to prove that the land in question was belonging to the appellant. As per evidence on record, the electric connection was taken by Bhodhi Ram Verma, father of the appellant, not by the appellant. By profession the appellant is a teacher and at the time of incident, he was performing his duty. As per evidence of PW-1 Shanti Bai, she states that the field of the appellant and the field of her (PW-1) father were adjacent to each other and she has no knowledge about the partition of the property of appellant's father, but the appellant was taking care of the field of his father. As per evidence available on record, who was the owner of the field where the incident happened, was not proved by the prosecution. As per Ex.-D/1 to Ex.-D/6, the electric connection has been given to the father of the appellant for his agriculture field and the land belongs to the father of the appellant. The appellant is a teacher by profession and he was to some extent taking care of his father's field, but on that ground it cannot be presumed that the appellant was doing any rash or negligent act while maintaining electric connection in the said field.
- 15.** PW-2 Devnath admitted in para-6 of his deposition that in the previous night of the date of incident, there was thunderstorm and it may be possible that due to such storm electric wire would have broken. PW-3 Diga Ram Nishad states that it is true that in the previous night of the date of incident, there was thunderstorm and it was raining and it may be possible that the electric wire would have broken due to thunderstorm. PW-12 Suresh Chandra Mandal on the basis of merg intimation (Ex.-P/1) has recorded numbered merg intimation (Ex.-P/8) and proved the same. PW-13 Dayaram Sahu is an Assistant Lineman. PW-13 produced the GI wire (length 76 meters) and black coloured service wire (length 228 meters) to the police which was seized by the police vide Ex.-P/5 on 12.07.2005 and proved the same. PW-

14 Rajesh Kumar Sahu is the Investigating Officer. PW-14 states that he has not obtained the papers of revenue records regarding ownership of the field or the possession holder of the same where the incident happened and the papers regarding taking of electric connection from the Electricity Department.

16. On the date of incident i.e. 25.06.2005, no any electric wires were seized, nor produced by the Electricity Department. On the basis of seizure memo (Ex.-P/5) dated 12.07.2005 GI wire (length 76 meters) and black coloured service wire (length 228 meters) were seized by the police from PW-13 Dayaram Sahu, Assistant Lineman of the Electricity Department, but no any fact is mentioned in seizure memo Ex.-P/5 that the wires were broken pieces or the same were without any tapping, not the said wires were produced before the Special Court and exhibited.

17. Looking to report (Ex.-P/10) submitted by Chhattisgarh State Electricity Board, no reason was mentioned in that report that in the previous night of the date of incident, the electric service wire was broken due to thunderstorm or raining. It was also not mentioned that GI wire was broken from different places and tapping was made, therefore, there is no any evidence adduced or proved by prosecution that the appellant is owner of pump house and the land, nor he is connection holder of the electricity. The appellant is a teacher, he was living with his father Bhodhi Ram to some extent the appellant was taking care of the land of his father, but on that basis it cannot be presumed that the appellant was doing any rash or negligent act in any manner while maintaining electric connection in the field of his father where the incident happened.

18. In view of the above, this Court is not convinced that the prosecution has proved its case beyond reasonable doubt against the accused/appellant to connect him with the crime in question. He deserves to be acquitted of the charge under Section 304-A of IPC by giving him benefit of doubt.

Accordingly, the conviction and sentence awarded by the Special Court (Electricity Act) under Section 304-A IPC is set aside and he is acquitted of the said charge. It is also stated that the appellant is on bail since 29.09.2008, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

19. In the result, the instant criminal appeal is allowed.

Sd/-
(Gautam Chourdiya)
Judge

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