

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

74 CRIMINAL REVISION APPLICATION NO.440 OF 2004

Gangabai W/o Nagorao Boyal
Age : 43 years, Occ : Household,
R/o Ikli Mor, Tq. Biloli,
Dist. Nanded.

..PETITIONER

-VERSUS-

1. Babu S/o Nagoba Mantriwad
Age : 38 years, Occ : Operator
in M.S.E.B., R/o Umri,
Dist. Nanded.
2. Kashinath S/o Balajirao Dhembare
Age : 43 years, Occ : Junior Engineer,
M.S.E.B. Arjapur, Tq. Biloli,
Dist. Nanded.
3. The State of Maharashtra

..RESPONDENTS

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Mr.Satish S. Manale, advocate for the applicant
(appointed).

Mr.A.M. Gaikwad, advocate for respondent no.1.

Ms. Sawari Patil h/f Mr. M.M. Patil (Beedkar),
advocate for respondent no.2.

Mr. S.B. Narwade, APP for respondent/State.

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CORAM : S.G. MEHARE, J.

DATE : DECEMBER 05, 2022

JUDGMENT :-

1. Heard learned counsel for the applicant
and learned counsel for respondent nos.1 and 2.
State is formal party.

2. Wife of deceased has preferred this

revision under section 401 of the Criminal Procedure Code. Her husband died of electrocution. She has alleged against respondent no.1, who was helper to the lineman.

3. Learned counsel for the applicant submits that the learned Judge, while acquitting accused no.1 did not consider the material evidence. There was an eyewitness to the incident. The learned Magistrate did not appreciate the evidence and erroneously concluded that the charge had not been proved against respondent no.1. He had referred to the evidence led by the witnesses to support his case.

4. The learned counsel for respondent no.1 has vehemently argued that the incident happened due to the fault of the deceased. On the day of the incident, he was not on duty and took the risk. He did not intimate the Sub-Station, that he is operating the electric line. In the circumstances, no offence is made out. The impugned judgment of the learned First Adhoc Additional Sessions Judge, Biloli, is legally correct, proper and free from error.

5. Perused the papers. It is not disputed that the deceased was a lineman and died of electrocution. It has been proved that on the day of the incident, the deceased was not on duty.

The evidence reveals that the deceased took a risk to operate, 11 K.V. Power Supply electric line without intimating the Sub-Station. There is nothing on record to show that he had informed the Sub-Station, that he was operating electric line. Considering the material produced on record, it clearly appears that the deceased took the risk on the say of PW-5. He did not follow the guidelines issued under the Indian Electricity Rules, 1956.

6. To attract section 304 of the Indian Penal Code, the prosecution has to establish that the culpable homicide not amounting to murder was without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Here in the case, the prosecution has no evidence that the incident happened in a sudden fight in the heat of passion, upon a sudden quarrel, and that the offender had taken undue advantage or acted in a cruel or unusual manner. Hence, the application of section 304 of I.P.C. was doubtful.

7. The learned counsel for respondent no.1 has pointed out that considering the allegations levelled against respondent no.1 under section 304A of the I.P. Code would attract, and that is also not proved.

8. Considering the ingredients of section 304-A of the I.P. Code, evidence as regards rash or negligent acts is entirely missing. The learned Adhoc Additional Sessions Judge appears to have correctly appreciated the evidence and committed no error on the face of the record in passing the impugned judgment of acquittal. There are no grounds to interfere with the impugned judgment and order. Hence, the revision stands dismissed.

9. Rule stands discharged.

10. Record and Proceedings be returned to the learned Trial Court.

(S.G. MEHARE, J.)

SGA