



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.113 OF 2016

Yograj s/o Atmaram Rahangdale,
aged about 45 years,
r/o Navatola (Ghivari), Gondia,
tahsil and district Gondia. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
Police Station Officer,
Police Station Gondia (Rural),
district Gondia. **Respondent.**

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Shri R.M.Daga, Counsel for the Appellant.

Shri A.M.Kadukar, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 17/08/2023

PRONOUNCED ON : 19/08/2023

JUDGMENT

1. The judgment and order dated 28.3.2016 passed by learned Additional Sessions Judge, Gondia in Sessions Trial No.66/2010 is under challenge in this appeal.

2. By the said judgment and order impugned, the appellant (accused) is convicted for offence punishable under Section 304 Part II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine Rs.10,000/-, in default, to suffer simple imprisonment for one month.

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3. In a nutshell, the prosecution case runs, as:

Kuwarlal Harilal Saulakhe, lodged report with Gondia Rural Police Station alleging that he along with Umashankar Saulakhe (the deceased) and other villagers was attending obsequies of one Madhuri. While the said obsequies were going on, the deceased went for a wee near a field of the accused. The field of the accused was secured with barbed fencing and the deceased received an electric current and died on the spot.

4. On the basis of the said report, the police registered the crime. The Investigating Officer visited the alleged spot of the incident, drawn spot and inquest panchanamas, seized clothes of the deceased. During the spot panchanama, he seized electric wires in presence of panchas under the seizure panchanama. The dead body of the deceased was sent for postmortem report. The burnt pieces of skin of the deceased are procured and forwarded to Chemical Analysis. The accused was arrested and after completion of investigation, chargesheet was filed before the court of law.

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5. As trial was exclusively triable by the court of sessions, learned Judicial Magistrate First Class committed the case to the court of sessions. The accused pleaded not guilty and claimed to be tried.

6. In support of the case, the prosecution examined following witnesses:

1. Kuwarlal Harilal Saulakhe (PW1) vide Exhibit-11, the informant;
2. Ivanlal Omkar Lilhare (PW2) vide Exhibit14;
3. Gangadhar Kawdu Hirapure (PW3) vide Exhibit-15;
4. Kuwarlal Rumanlal Damahe (PW4) vide Exhibit1-16;
5. Sitaram Dhonduji Chikhlonde (PW5) vide Exhibit1-17;
6. Suresh Dharamchand Sihare (PW6) vide Exhibit-19, a pancha on the spot panchanama;
7. Mahesh Jagdish Jaiswal (PW7) vide Exhibit-26, Junior Engineer of MSEDCL;
8. Bhumeshwari wd/o Umashankar Savalakhe (PW8) vide Exhibit-33, the wife of the deceased;
9. Dhanlal s/o Koluji Yele (PW9) vide Exhibit-34, the head constable, and
10. Mahadeo s/o Maroti Parate (PW10) vide Exhibit-40.

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7. Besides the oral evidence, the prosecution placed reliance on report Exhibit-12, First Information Report Exhibit-13, inquest panchanama Exhibit-18, spot panchanama Exhibit-20, seizure memo Exhibit-21, and postmortem report Exhibit-24.

8. On the basis of the said oral as well as the documentary evidence, the prosecution claimed that it has proved the case against the accused beyond reasonable doubt. The incriminating circumstances are put to the accused in order to obtain his explanation regarding evidence appearing against him by recording his statement under Section 313 of the Code of Criminal Procedure. The defence of the accused is of total denial and of false implication.

9. The trial court, after appreciating the evidence, that the death of the deceased was caused due to the electric current and the accused caused the said death, held the accused guilty for the offence culpable homicide not amounting to murder punishable under Section 304 Part II of the Indian Penal Code.

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10. Being aggrieved and dissatisfied with the judgment and order of conviction and sentence, the appeal is preferred by the accused on the grounds that the trial court ought to have considered that there was no intention or knowledge to attract the provisions of Section 304 of the Indian Penal Code, i.e. culpable homicide not amounting to murder. It is simply an accident and, therefore, at the most the offence committed by him falls under Section 304-A of the Indian Penal Code and merely negligence is to be attributed to him. He submitted that though the prosecution has examined ten witnesses in support of the charge, the evidence adduced nowhere shows that with an intention to cause the death of the deceased, the said electric current was attached to the fencing of the agricultural field of the accused. There was no knowledge to the accused to the effect that the deceased would come in contact with the said electric wire fencing the agricultural field and his death would cause. Thus, in absence of the intention and knowledge, only negligence is attributable to the accused and the case would cover under Section 304-A of the Indian Penal Code.

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11. Heard learned counsel Shri R.M.Daga for the accused and learned Additional Public Prosecutor Shri A.M.Kadukar for the State.

12. Learned counsel for the accused reiterated the contentions raised in the appeal memo and submitted that there is absolutely no evidence against the accused to attribute the intention and knowledge to cause the death of the deceased and, therefore, the conviction of the accused deserves to be modified. He further submitted that during the pendency of the appeal, the accused and the wife of the deceased as well as the informant entered into a settlement. In view of their settlement, the wife of the deceased, who had filed a revision for enhancement of the sentence, has withdrawn the said revision. In the light of the above circumstances, though the offence is not compoundable, the sentence imposed on the accused can be modified by imposing the sentence he had already undergone in jail.

13. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **State of Rajasthan vs. Chhittarmal**¹

¹ (2007)10 SCC 792

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wherein it is held that accused allegedly to have fixed live naked electric wire on drain supplying water which was between fields of deceased and accused with an intention to kill him due to enmity between them. Held, neither intention nor knowledge to cause death is established from circumstantial evidence. The conviction was altered from Section 302 to Section 304-A of the Indian Penal Code.

He further placed reliance on the decision of the Honourable Apex Court in the case of **Ishwar Singh vs. State of Madhya Pradesh**² wherein it is held that it would not be appropriate to order compounding of an offence not compoundable under Code ignoring and keeping aside statutory provisions. However, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance.

On the same aspect, he placed reliance on the decision of the Honourable Apex Court in the case of **Shankar**

² (2008)15 SCC 667

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and others vs. State of Maharashtra³ and on the decision of the full bench of this court in the case is **Maya Sanjay Khandare and anr vs. State of Maharashtra⁴** wherein also it is held that compromise entered into would be only a factor to be considered while imposing appropriate sentence. Compromise would be a mitigating factor to be taken into consideration while awarding appropriate sentence.

14. *Per contra*, learned Additional Public Prosecutor for the State submitted that the prosecution has proved that the accused has protected his agricultural field fencing with electric wire which caused the death of the deceased. There was knowledge to the accused that this act can cause the death of the deceased. This being the position, he submitted that as no interference is called for in the judgment and order of conviction and sentence, the appeal be dismissed.

15. Heard both the sides and perused the record with able assistance of learned counsel for the parties.

³ (2019)5 SCC 166

⁴ 2021(1) Mh.L.J.(Cri)1

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16. A material question for consideration is, whether the offence committed by the accused is covered under Section 304 or 304-A of the Indian Penal Code.

17. There is no dispute that the death of the deceased is caused due to the electric shock. The postmortem report Exhibit-24 shows that probable cause of death is due to electric shock on neck. Thus, the medical evidence sufficiently shows that the death of the deceased is caused due to electric shock.

18. Insofar as the oral evidence is concerned, the prosecution has examined informant PW1 Kuwarlal Saulakhe.

As per evidence of informant PW1 Kuwarlal Saulakhe, when he along with the deceased had been to the spot of the incident to attend obsequies one Madhuri, the deceased went to a wee near the field of the accused and got electric shock and his death is caused instantaneously.

19. The evidence of PW2 Ivanlal Lihare; PW3 Gangadhar Hirapure; PW4 Kuwarlal Damahe; PW5 Sitaram Chikhlonde, and PW6 Suresh Sihare, who acted as pancha,

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and PW8 Bhumeshwari, the wife of the deceased, shows that the death of the deceased is caused due to electric shock.

20. The defence of the accused is that he protected his field by barbed fencing having electric current in it to safeguard his orchid wherein banana plants were cultivated. It is further his defence that at the spot of the incident, several agriculturists, having their banana orchids, protected their orchids by barbed fencing having electric current. It is further defence of the accused that he was not having intention or knowledge that the deceased would come there for wee his death would cause. Accidentally, the deceased went near the agricultural field and died due to electric current. It is further defence of the accused that he has obtained electric connection from the MSEDCL legally and he has protected his crops by providing barbed fencing with electric current.

21. All the witnesses during their cross examinations admitted that adjoining banana orchids are also protected by the barbed fencing.

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22. The evidence of PW7 Mahesh Jaiswal, Junior Engineer of MSEDCL, also shows that the accused has obtained an authorized connection for his banana orchid. A meter was installed and additional supply was provided to him to protect his orchid.

23. Thus, the evidence on record sufficiently shows that the accused has obtained the electric connection on his fencing with an intention to protect his orchid.

24. As regards the applicability of Section 304 of the Indian Penal Code, the said Section states that whoever commits culpable homicide not amounting to murder, shall be punished with [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

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without any intention to cause death, or to cause such bodily injury as is likely to cause death.

25. Thus, plain reading of the above Section makes it clear that Section 304 is divided into two parts which are referred as 304 Part I and 304 Part II of the Indian Penal Code.

Part I of Section 304 of the Indian Penal Code is applicable where accused causes bodily injury to victim with an intention to cause death or with an intention to cause such bodily injury as is likely to cause death.

Part II of Section 304 of the Indian Penal Code operates when death is caused by doing an act with knowledge that it is likely to cause death, without any intention to cause death or to cause such bodily injury as is likely to cause death.

26. Thus, before invoking Section 304 of the Indian Penal Code, following ingredients must be satisfied :

- i. death of a person must have been caused;

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ii. such death must have been caused by act of accused by causing bodily injury, and

iii. there must be an intention on the part of accused to cause death or to cause bodily injury which is likely to cause death (Part I) or there must be a knowledge on the part of accused that bodily injury is such that is likely to cause death (Part II).

27. Thus, the most important consideration is an intention or a knowledge with which death is caused. The intention to cause death or the knowledge that death will be probably caused is essential.

28. When Section 304-A was inserted in the Indian Penal Code by Amendment Act 1870, it runs as causing death by negligence. The said Section states, "whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

29. Thus, there is distinction between Section 304 and Section 304-A of the Indian Penal Code.

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Section 304-A states about case where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder within the meaning of Section 300 of the Indian Penal Code.

Section 304-A deals with homicidal death by rash and negligent act. Though the term negligence has not been defined in the Indian Penal Code, it can be stated that the negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a reasonable and prudent man would not do.

30. In the light of the above said settled position, it is to be seen whether the offence under Section 304 Part II of the Indian Penal Code is made out.

31. To attract Section 304 of the Indian Penal Code, there must be knowledge on the part of accused that bodily injury is such that it is likely to cause death.

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32. It is to be noted that the defence of the accused was to protect his orchid and for that he obtained an authorized electric supply and protected his crops by connecting electric current to the fencing of his orchid.

33. On the basis of the said evidence, admittedly, there was no previous enmity between the accused and the deceased. The sum and substance of the entire prosecution case discloses that the deceased came at the spot of the incident when he attended obsequies of a villager. Accidentally, he went for wee near the agricultural field of the accused, secured with barbed fencing attached with electric current, and received an electric shock died on the instantaneously. Admittedly, there was no intention of the accused to cause his death. There was no knowledge to the accused the death would be caused.

34. Thus, from the evidence neither intention nor knowledge of the accused to cause death of the deceased is established from the circumstantial evidence.

35. Learned counsel for the accused rightly pointed out the decision of the Honourable Apex Court in the case of

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State of Rajasthan vs. Chhittarmal cited supra wherein in the similar facts the Honourable Apex Court held that neither intention nor knowledge to cause death is established from circumstantial evidence and altered conviction from Section 302 to Section 304-A of the Indian Penal Code.

36. Similar are the circumstances in the present case that the accused has fixed electric supply to the fence of his orchid to protect his crops and there was no intention to cause death either of the deceased or of any other person. Accidentally, the deceased went there and sustained electric shock which resulted into the death of the deceased.

In view of the same, the observation of the trial court, that the offence committed by the accused is covered under Section 304 Part II of the Indian Penal Code, is liable to be modified.

From the evidence on record, the offence attributable against the accused is under Section 304-A of the Indian Penal Code.

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37. Now, the accused has come with a case that the wife of the deceased entered into a settlement with him and, therefore, he be permitted to compound the offence.

38. Admittedly, the offence punishable under Section 304-A of the Indian Penal Code is not compoundable and even the same is not compoundable with permission of the court also.

39. It is submitted that though the offence is not compoundable, considering the peculiar circumstances, the accused be permitted to compound the offence and he be acquitted from the charges.

40. In catena of decisions, viz. **Ishwar Singh vs. State of Madhya Pradesh** and **Shankar and others vs. State of Maharashtra** cited *supra*, the Honourable Apex Court held, on the aspect regarding compounding of offence which is not compoundable, that it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. However, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive

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sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind.

The above said aspect is also considered by the full bench of this court in the case of **Maya Sanjay Khandare and anr vs. State of Maharashtra** cited *surpa* wherein this court had considered the judgments of the Honourable Apex Court in the cases of **Gian Singh Vs. State of Punjab and anr**⁵ and **Gopalkumar B.Nair vs. CBI and anr**⁶ wherein it was observed that what was referred to the larger bench, while deciding Gian Singh (*supra*), was question whether quashing of non-compoundable offence on the basis of compromise/settlement of dispute between parties would be permissible and would not amount overreaching provisions of Section 320 of the Indian Penal Code.

The full bench further considered that Section 320(1) of the Code specifies offences that may be compounded by the persons mentioned in the third column of the table appended thereto. Section 320(2) specifies offences

⁵ (2002) 10 SCC 303

⁶ (2014) 5 SCC 800

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that may be compounded with the permission of the Court before which any prosecution for such offence is pending. As per Section 320(5), when the accused has been committed for trial or has been convicted and an appeal is pending, the offence cannot be compounded without the leave of the concerned Court. Under Section 320(6) the High Court or the Court of Sessions in exercise of revisional power can allow any person to compound any offence which he is competent to do so under Section 320.

While considering this issue, the full bench of this court held that if any compromise is entered into between the convict and the victim/complainant post-conviction for a non-compoundable offence, such compromise by itself cannot be a reason to set aside the order of conviction. However fact of compromise could be taken into account in determining quantum of sentence. Accordingly, while maintaining the order of conviction, the Honourable Apex Court in the case of **Ram Pujaan and ors vs. State of U.P.**⁷ reduced sentence to period already undergone by appellant.

7 AIR 1973 SC 2418

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41. Thus, the legal position is clear that compromise post-conviction for a non-compoundable offence *ipso facto* cannot result in acquittal of convict and compromise is one amongst various aspects to be considered while imposing appropriate sentence when the conviction is liable to be maintained on examining merits of case.

42. In the light of the above principles, the conviction of the accused under Section 304 Part II of the Indian Penal Code cannot be maintained. However, he is guilty of offence punishable under Section 304-A of the Indian Penal Code.

43. Considering the fact of the compromise between the parties, the sentence imposed on the accused under Section 304 Part II of the Indian Penal Code is to be reduced by holding that the offence is not compoundable.

However, by taking into consideration the fact of compromise between the parties, the sentence imposed on the accused under Section 304 Part II of the Indian Penal Code is modified and his sentence shall be which he had already undergone in jail.

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44. The alleged incident took place in the year 2010 and more than 12 years have already been passed. After the conviction, he was taken into custody. During the pendency of the appeal, the sentence imposed on the accused was suspended and the accused was released on bail. In the meantime, he has undergone sentence of imprisonment of fifteen days. He has also deposited the fine amount. The fine amount is concerned, the same is not required to be disturbed.

45. Considering the totality of the facts and circumstances of the case and the law laid down by the Honourable Apex Court and by the full bench of this court, in my opinion, it would be in the interests of justice if the sentence imposed on the accused is reduced to sentence he had already undergone in jail. Hence, this Court passes following order:

ORDER

1. The criminal appeal is **partly allowed**.

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2. The judgment and order dated 28.3.2016 passed by learned Additional Sessions Judge, Gondia in Sessions Trial No.66/2010 convicting the appellant under Section 304 Part II of the Indian Penal Code and sentencing to suffer rigorous imprisonment for ten years is modified.

3. The appellant is convicted for offence punishable under Section 304-A of the Indian Penal Code and his sentence shall be he had already undergone in jail.

4. The fine amount is not disturbed. If the accused has not deposited the amount of fine, he will deposit such amount within six weeks from today.

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!