

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH 2023:PHHC:072850

CRR-3439-2018 (O&M)
RESERVED ON:16th NOVEMBER, 2022
PRONOUNCED ON:31.01.2023

KAILASH CHANDPETITIONER

VERSUS

SHIMBHU DAYAL AND ANOTHERRESPONDENTS

CRR-192-2019 (O&M)

SHIMBHU DAYALPETITIONER

VERSUS

STATE OF HARYANA AND ANOTHERRESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. J.P. Sharma, Advocate
for the petitioner (in CRR-3439-2018).

Mr. Abhishek Jindal, Advocate
for the petitioner (in CRR-192-2019)

Mr. Chetan Sharma, AAG, Haryana.

SANDEEP MOUDGIL, J

CRM-36441-2018 in CRR-3439-2018

Application is allowed, as prayed for.

CRM-2573-2019 in CRR-192-2019

Prayer in the present application is for condonation of delay of 12 days in filing the present revision petition i.e., CRR-192-2019.

In view of averments made in the application, which is duly supported by an affidavit, the same is allowed, delay of 12 days in filing the

revision petition is condoned.

CRR-3439-2017 (O&M) and CRR-192-2019

Vide this common order, I intend to dispose of the afore-said two revision petitions, as they have arisen out of the same order.

CRR-3439-2018 has been filed by the accused-Kailash Chand against the judgment of conviction dated 26.09.2018 and order of sentence dated 27.09.2018 passed by learned Additional Sessions Judge, Narnaul (for short 'Appellate Court'), thereby, reversing the judgment of acquittal dated 01.08.2017 passed by learned Judicial Magistrate Ist Class, Narnaul (for short 'trial Court'). Vide order of sentence dated 27.09.2018, the petitioner has been sentenced to undergo Simple Imprisonment for a period of six months for commissioning of offence under Section 304-A IPC and further to pay compensation to the tune of Rs.1,00,000/- under Section 357 Cr.P.C. to the Victim/complainant.

CRR-192-2019 has been preferred by the complainant against the judgment of conviction dated 26.09.2018 and order of sentence dated 27.09.2018 to seek an enhancement of sentence.

The factual matrix of the case is that FIR No. 280, dated 06.12.2013, under Section 304-A IPC (for short 'IPC') was registered on the complaint of Shimbhu Dayal on the allegations that his son Rajesh Kumar (since deceased) was working in the Electricity Department as Assistant Lineman on DC rate and on 16.11.2013, his son was discharging his duty with Kailash Chand Lineman at village Dokhera. However, at about 1.00 P.M. (Noon), he came to know that his son had sustained an Electric shock and after sustaining injuries he was got admitted in PHC Nangal Chaudhary by one Mukesh Kumar and Subhash. Keeping in view the health of the patient, the

doctor referred him to SMS Jaipur where, he underwent treatment w.e.f. 16.11.2013 to 29.11.2013. On 29.11.2013, he was shifted to Safdurjang Hospital, Delhi but he died on the way near Kotputli. It was alleged that as he was not having legal knowledge, his son was cremated without any postmortem examination. It is alleged that his son had died due to the negligence of Kailash Chand and Electricity Department. Accordingly, FIR in question was got registered at Police Station Nangal Choudhary. After trial, petitioner-Kailash Chand was acquitted by learned Judicial Magistrate Ist Class, Narnaul but in appeal preferred by the complainant, the appellate court reversed the findings of the trial Court and convicted/sentenced the petitioner-accused for the offence under Section 304-A IPC.

Learned counsel for the petitioner in CRR-3439-2017 has vehemently argued that the petitioner Kailash Chand has been made scape-goat in the entire case. It is asserted that in the present case the occurrence is alleged to have been taken place on 16.11.2013 whereas the son of the complainant namely Rajesh Kumar had died on 29.11.2013. The assertion is that there is no postmortem report, which would establish the cause of death and there is also an unexplained delay in lodging the FIR. It is further asserted that no document has been placed on record to substantiate the presence of the petitioner-accused. As such, occurrence and the role of the petitioner are not proved on record.

Learned counsel appearing for the petitioner in CRR-192-2019, has vehemently argued that it cannot be overlooked that on the fateful day the son of the complainant namely Rajesh Kumar was working at Village Dokhera in the presence of accused-Kailash Chand. His assertion is that from the bare perusal of MLR, it is abundantly clear that due to electric shock the deceased

sustained five injuries, therefore, there was no occasion to get the postmortem conducted when the son of the complainant unfortunately passed away. It is asserted that there is sufficient evidence on record to fasten the accused with alleged crime.

From the perusal of record it is crystal clear that the deceased Rajesh Kumar was working as Assistant Lineman and on the fateful day, i.e., 16.11.2013, he along-with accused-Kailash Chand, Lineman had gone to the village Dokhera to repair the line. According to the complaint, the complainant had received an information that his son met with an accident while working and has been admitted in the hospital. As per MLR, Ex.PW-5/C, following injuries were noticed on the person of the deceased:-

- (i) Entranic wound over left forearm upper 1/3 aspect lateral side 3x2 cm black in colour, abrasion and bruise scalded skin over elbow joint.
- (ii) Abrasion over neck of patient with scalded skin.
- (iii) All face seen black in colour
- (iv) Wound over occipital region of skull burn hair present with black wound.
- (v) Wound over side of abdomen region.

It is also clear from the record that due to serious condition, the injured (deceased) was referred to SMS Hospital, Jaipur where he remained under treatment from 16.11.2013 to 29.11.2013. It is also not in dispute that the deceased died due to electrocution. Moreover, the testimony of the complainant is fully corroborated by the testimonies of PW-6 Mahesh Kumar and PW-7 Subhash Chand who categorically stated that on receiving the information about electrocution, they reached at the spot and noticed the injured-deceased lying down the pole. His left arm had been burnt due to electrocution. On query put to the injured he disclosed that accused-Kailash

Chand directed him to repair the electricity line and had assured that he will switch off the line. PW-6 further clarifies that on being sure that the accused-Kailash Chand had switched off the supply to the line, he had gone to repair the line but as a result of wrong assurance give by Kailash Chand, the deceased suffered electric shock.

The presence of the deceased cannot be disputed as PW-4 Mr. Suresh Kumar while appearing in the witness box had proved the attendance register for the month of November 2013, according to which the deceased was present on duty on the fateful day. Moreover, it is also crystal clear from the information given to the IO under RTI that though Kailash Chand Lineman was authorized but he did not take the permit to work as Naulaza Feeder for which he was authorised. It has also come on record that on the fateful day accused-Kailash Chand had been provided the gloves and other material for safety, but he did not provide the same to the deceased on that fateful day while discharging his duty.

From bare perusal of Ex.PW-5/B, it is abundantly clear that the doctor had sent ruqa to the Investigating Officer on the very same day when the alleged occurrence took place i.e. 16.11.2013, thus, the argument raised by learned counsel for the accused-Kailash Chand that there is a delay in lodging the FIR is of no help. It has also come on record that the injured remained admitted in SMS Hospital, Jaipur from 16.11.2013 to 29.11.2013 and died on the way to Safdarjung Hospital, Delhi after having been referred to the said hospital by SMS Hospital, Jaipur.

Moreover, there is no motive of the complainant to falsely implicate the accused in the present case. It is also proved on record on the basis of medical evidence that the death had occurred due to electrocution.

The case of the prosecution cannot be shrugged off merely on the ground that the postmortem of the deceased is not produced or there is unexplained delay in lodging FIR because the foremost duty of the complainant was to save the life of his son. The deceased, undoubtedly, lost his life while on duty and under the supervision of accused-Kailash Chand. If the story of prosecution is disbelieved, then there is no explanation by Kailash Chand as to how deceased Rajesh Kumar suffered electric shock,. Further, non-collection of permit and gloves etc. by the accused-petitioner shows his negligence which resulted into death of an innocent person.

As such, this Court does not find any illegality, infirmity and perversity in the judgment passed by the learned Appellate Court and accordingly, CRR-3439-2018 deserved to be dismissed on the fact findings returned by the lower Appellate Court.

There is no force in the contentions of counsel for the complainant which may warrant interference in the judgment of learned Appellate Court to enhance the sentence. As such, CRR-192-2019 also stands dismissed being devoid of merits.

A copy of this order be placed on the file of the other connected petition.

31.01.2023
sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>