

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA S-1033-SB-2012 (O&M)
Date of Decision: 12.05.2023

Bhagwan Singh ...Appellant(s)
Vs.
State of Punjab ...Respondent(s)

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kunal Dawar, Advocate
for the applicant/appellant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

**CRM-38033-2015 and
CRM-13223 of 2016 and**

The applications are allowed as prayed for, subject to all
just exceptions.

**CRM-38034-2015 and
CRM-13224 of 2016**

1. Vide these applications under Section 391 Cr.P.C., the applicant/appellant had sought the permission of this Court to lead additional evidence in the shape of statement of Nirmal Singh, recorded before the learned Additional Civil Judge, Senior Division, Nabha and Chapter III and VI of the Punjab State Electricity Safety Code as Annexures A-1 and A-2, respectively, and the official record of Punjab State Electricity Board with regard to the work of 100 KVA

Transformer on the land of Harnek Singh, in village Paharpur as Annexure A-3 (Colly.)

2. The learned counsel for the applicant/appellant vehemently argued that the applicant wanted to place on record the statement of Nirmal Singh, which was recorded in Civil Suit filed by the legal heirs of Gurmeet Singh (since deceased) for damages and compensation, as an additional evidence. He further submitted that Nirmal Singh was examined as PW2 in the present criminal trial, however, he had made a different statement Annexure A-1 before the learned Civil Judge (Senior Division), Nabha, which is totally against the case of the prosecution. Apart from that, the applicant/appellant also wanted to place on record Chapter III and Chapter VI of the Punjab State Electricity Safety Code to show the proper authorization to particular job and to further show that without permit, no person was supposed to carry out the work in the proximity of any equipment apparatus or line. Still further, the applicant/appellant also wanted to place on record the official record of Punjab State Electricity Board as Annexure A-3. As per the said official record, the work of transformer of Harpal Singh at village Paharpur had already been completed on 10.06.2009 and the final measurement was also done on 10.06.2009, whereas the accident had taken place on 19.06.2009, thus, there was no occasion for Gurmeet Singh, deceased, to do any work on 19.06.2009 on the line of said transformer at village Paharpur.

Learned counsel further contended that the said additional evidence would be necessary for the effective disposal of the present case.

3. The learned State counsel vehemently opposed the submissions made by the learned counsel for the applicant/appellant and submitted that the leading of additional evidence at such a belated stage would be impermissible in law and the applicant/appellant wanted to lead evidence only to delay the disposal of the case. He further contended that Nirmal Singh has also been examined as PW2 and was also subjected to cross-examination at length by the learned defence counsel. Any statement made by PW2 Nirmal Singh in a different case would have no bearing on the facts of the present case. Apart from that, the rules of Punjab State Electricity Board Safety Code were already in the knowledge of the present applicant/appellant and he intentionally did not place on record earlier and now wanted to create false defence. Apart from that, the documents (Annexure A-3), i.e. the official record of Punjab State Electricity Board were also irrelevant and were within the knowledge of the present applicant/appellant at the time of leading evidence by him. However, since the said documents were not relevant, the same were not placed on record earlier.

4. I have heard the learned counsel for the parties at length and perused the record with their able assistance.

5. Chapter XXIX of the Cr.P.C. deals with “Appeals”. Section 391 Cr.P.C. empowers the appellate court to take further evidence or direct it to be taken.

6. Section 391 Cr.P.C. is reproduced below for ready reference:-

391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

7. It has been held by the Hon'ble Supreme Court of India in the matter of **Brig Sukhjeet Singh (Retd.) MVC Vs. The State of Uttar Pradesh and Others 2019(1) R.C.R. (Criminal) 985** as follows:-

“15. This Court again in Rambhau and Another Vs. State of Maharashtra, (2001) 4 SCC 759 had noted the power under Section 391 Cr.P.C. of the Appellate Court. Following was stated in Paragraph Nos. 1 and 2:-

“1. There is available a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same.....

2. A word of caution however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused. This Court in the case of Rajeswar Prasad Misra v. State of W.B. in no uncertain terms observed that the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it. This Court was candid enough to record however, that it is the concept of justice which ought to prevail and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard.”

8. No doubt, in view of the law laid down by the Hon'ble Supreme Court and this Court, it is clear that there are no fetters on the power under Section 391 Cr.P.C., still, the orders of taking additional evidence in a criminal appeal cannot be adopted as a matter of course by the appellate Court. Further, the appellate Court has to take a considered decision on the contrary for adducing additional evidence in appeal and can arrive only after the appeal itself has been heard on merits and not before. Still further, the appellate Court is also bound to examine whether the additional evidence would be necessary for the just and effective disposal of the appeal before the appellate Court. Further, it must be proved that the evidence sought to be placed on record by way of additional evidence was necessary and essential for the final disposal of the matter. Apart from that, the power has to be exercised sparingly and only in suitable cases.

9. Now reverting to the facts of the instant case, the applicant/appellant wanted to placed on record the statement of Nirmal Singh recorded in a civil suit filed by the legal heirs of Gurmeet Singh for damages and compensation before the learned Additional Civil Judge, Senior Division, Nabha. However, Nirmal Singh had also been examined in the present case as PW2 and was subjected to lengthy cross-examination by the learned defence counsel. A perusal of the testimony would reveal that the said witnesses had been examined on all possible aspects of the matter.

Thus, when the statement of Nirmal Singh has already been recorded in the present case, his statement in some other case, even though referred to the present controversy, would be totally irrelevant. Apart from that, the applicant/appellant also wanted to place on record Chapter III and Chapter VI of the Punjab State Electricity Safety Code as Annexure A-2. First of all, in the applications, the applicant has simply stated that the additional evidence sought to be produced by the applicant is material and would definitely help in finding the truth and would also help the applicant to prove his innocence. However, in the entire application, the applicant/appellant has not highlighted the relevance and importance of the said Rules. Further, the said Rules, i.e. Annexure A-2 were also in the knowledge of the present appellant at the time of the leading evidence before the learned trial Court. However, he chose not to produce the same before the learned trial Court and now wanted to place on record the said Rules just to prolong the matter, that too, without disclosing relevance or importance of the said Rules. Still further, the applicant/appellant wanted to place on record the official record of the Punjab State Electricity Board with regard to the work of 100 KVA transformer on the land of Harnek Singh in village Paharpur as Annexure A-3.

10. Again, it is observed that the applicant/appellant has failed to mention in his application as to how the said additional

evidence would be beneficial and how it would be helpful in proving the innocence of the present applicant. Still further, even the said official record was already available with the present appellant while the parties were leading evidence before the learned trial Court. Even, this Court has perused the official record and it is not comprehensible as to how the record would be relevant and necessary for proving the innocence of the present applicant/appellant. Thus, finding no merits in the said applications, the same are, accordingly, dismissed.

CRA S-1033-SB of 2012

1. The present appeal is directed against the judgment of conviction and order of sentence dated 24.02.2012 passed by the learned Sessions Judge, Patiala, whereby, the present appellant has been convicted for the commission of offence punishable under Section 304 Part II of IPC and was sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs. 10,000/- alongwith default stipulation.

2. The present appellant was tried for committing the offence under Section 304 IPC by the learned trial Court for causing death of his colleague Gurmeet Singh, who was working as a Junior Engineer in the Punjab State Electricity Board, Sub Division Dhingi. As per the case of the prosecution, Gurmeet Singh (since deceased), was working as a foreman, at Sub-Division Dhingi under the Electricity Board. On the other hand, the present appellant was

working as a Junior Engineer there. A new electricity transformer was to be installed on the 11 KW power line known as Dhangi Feeder. As per his duty, the present appellant had issued a permit to work for switching off the power supply on the said line. At about 11.00 a.m., on 19.06.2009, when Gurmeet Singh, the deceased was installing electricity wire and his colleagues Banarsi Dass and Nirmal Singh, both assistant lineman were also working with him and his son Gurtej Singh PW1 was also present there. As per the allegations, the present accused had resumed the supply of the electricity line at about 11.10 a.m., as a result of which, Gurmeet Singh and Banarsi Dass, who were installing electricity wires suffered electric shock and fell down, however, Banarsi Dass suffered a minor injury, but unfortunately Gurmeet Singh suffered severe burn injuries due to electric shock. He fell down and was unconscious. He was immediately shifted to the hospital but he was declared brought dead. Ultimately, the police recorded the statement of his son Gurtej Singh and on the basis of the same formal FIR Ex.PA/2 was registered in the police station. The dead body of the deceased was taken into possession and inquest report Ex.PF was prepared. Thereafter, the postmortem examination was conducted and the statement of various prosecution witnesses were also recorded.

3. Finding a prima facie case, the learned trial Court framed the charge under Section 304 IPC against the present appellant. As per

the formal charge sheet, at about 11.10 a.m., on 19.06.2009, the present appellant, being the Junior Engineer of PSEB, Sub Division Dhingi got the electricity transmission restored in the area of village Paharpur by cancelling permit issued to him without ensuring the safety of his co-employees, who were also installing a transformer at Dhingi Feeder, Paharpur, which resulted into death of Gurmeet Singh foreman and, thus, he committed the offence under Section 304 IPC. The present appellant pleaded his innocence and claimed trial.

4. In order to prove the charge, the prosecution examined nine witnesses.

5. The prosecution examined PW1 Gurtej Singh complainant as PW1. As per him, at about 10.30 a.m., he reached at the place of occurrence to deliver the meals to his father, where his father alongwith Banarasi Dass and Nirmal Singh Assistant Lineman, were performing their duties and were installing wires over the transformers, which had been fixed over the poles. All the aforesaid three persons were on the pole and told him that they will come down from the pole only after completing the job. After some time, Nirmal Singh Assistant lineman came down and Banarasi Dass was standing on the transformer. After some time, his father received a sudden electric shock and he fell down on the ground. Banarasi Dass also received electric shock and he came down after some time. They took his father to Civil Hospital Nabha where he declared him

dead. Nirmal Singh, Assistant lineman/eye witness was examined as PW2 and he supported the case of PW1 Gurtej Singh. As per him, he was working as ALM in the Electricity Board and was posted at Sub Division Dhingi. On 19.06.2009, he alongwith Banarasi Dass and Gurmeet Singh (deceased) had gone to install a new transformer in village Paharpur on the orders of the present appellant. They had reached in village Paharpur at the site and started their work at 09.00 a.m. They started their work only after the permit was got issued from the Grid Incharge by the present appellant. After the electricity supply was switched off, they started their work. At about 11.10 a.m., suddenly supply was switched on from the grid and due to which, Gurmeet Singh fell down after getting electric shock and Banarasi Dass got down from the pole safe and sound. Gurmeet Singh became unconscious and was taken to Civil Hospital Nabha, where he was declared brought dead. He rang up grid station and was told by Anil Kumar Chpora, Incharge that the present appellant had got cancelled the permit and, therefore, the electricity line was restored. The present appellant before releasing the electricity supply did not ask anyone of them working on the transformer if the work was completed or not. Anil Kumar, Incharge, Grid, was examined as PW3. He had apprised the PW2 Nirmal Singh that the present appellant got cancelled the permit to work and the appellant had got resumed the electricity supply. Even, he got the electricity supply resumed at the time when

Gurmeet Singh, foreman, deceased was still working on the electricity line in the area of village Dhingi, who later on died due to electric shock. The prosecution further examined PW4 Karamjit Singh SSA and he also supported the case of the prosecution. Ravinder Singh, Patwari, Paharpur, who had prepared the scaled map Ex.PD was examined as PW6. Dr. Taranjit Singh, who had conducted the postmortem examination on the dead body of Gurmeet Singh on 19.06.2009 was examined as PW6 and he found the following injuries on the dead body:-

“1) Lacerated wound 21 cm x 12 cm on the right arm on its posterior lateral aspect showing ragged grayish white margins in the form of a shallow crater surrounded by hyperemic zone.

IIInd wound 10 cm x 9 cm on the lateral aspect of right chest wall in its upper part.

2) Exist wound in the form of laceration present on the left big toe and 1st toe, IIInd and Third toe with ragged margins.

3) An abrasion 31 cm x 10 cm on the left leg on its posterior aspect.

4) An abrasion 15 cm x 10 cm on the left thigh on the posterior aspect in its lower part.

- 5) *An abrasion on the right little toe and right foot on its lateral aspect about 2 cm above the base of the little toe.*
- 6) *Abrasions on the left hand fingers and on the left hand at the base of the index finger.*
- 7) *An contusion 4 cm x 2 cm on the upper forehead.*
- 8) *An contusion 1 ½ x ½ cm on the forehead just above the base of nasal bridge.*

6. In his opinion, the cause of death in this case was due to effects of electricity current. The prosecution further examined PW7 Manpreet Singh, LDC, who produced the record before the learned trial Court. As per him, vide order dated 23.01.2009, the present appellant was posed as JE in Sub Division Dhingi and the copy of the same was Ex.PH. He also produced on record the copy of the office order dated 25.01.2010 regarding the employees working with the present appellant and copy of the same is Ex.PH/2. As per him, Nirmal Singh ALM and Gurmeet Singh foreman were working with the present appellant. HC Inderjit Singh was examined as PW8, who tendered into evidence his duly sworn affidavit Ex.PJ. ASI Jaswant Singh, who was the Investigating Officer, was examined as PW9. He also conducted the detailed investigation in the present case and after completion of the investigation, the present appellant was challaned by SI Saminder Singh.

7. After the closure of the prosecution evidence, the statement of the present appellant was recorded under Section 313 Cr.P.C and he had taken the following stands:-

“ I am innocent. I have been falsely involved in the present case. I have committed no offence. I was posted as JE, Sub Division Dhingi and deceased Gurmeet Singh was posted as Foreman at Sub Division Dhingi, Gurmit Singh (deceased) who was posted as Foreman, was not working under me in any manner. On the alleged day of occurrence, i.e. on 19.06.2009, I had obtained permit No. 30, for removing the set-capacitor, from 11 K.V. Dhingi Feeder, and also obtained permit No. 31, for installing set-capacitor, at 11 K.V. Gurditpura Feeder. I had to perform my duty, as per schedule mentioned in permit No. 30, and permit No. 31. Except the aforesaid work, there was no other work, whatsoever, to be performed, at any place. I had obtained the aforesaid permits, i.e. permit No. 30 and permit No. 31 as per directions of Sh. Megh Singh, JE (I), Incharge of Sub Division Dhingi. After complying with the directions of Incharge- Megh Singh, JE, I performed my duty and after completion of aforesaid work, as mentioned in permit No. 30 and permit No. 31, I informed the Sub-Station and accordingly, the aforesaid permits were cancelled. There was no work permit, obtained by me, for doing any work, at Village Paharpur, i.e. at the Transformer of Surjit Singh son of Sh. Sadhu Singh resident of Village Paharpur. I never directed Gurmit Singh (deceased), Foreman, to do any

work, at Village Paharpur. As he was not working under me, nor was under my control, no question arises to ask Gurmit Singh, to do any work at village Paharpur, especially, when there is no such permit to install any Transformer, at Village Paharpur. Even, I was not having any knowledge that Gurmit Singh (Foreman) had gone to Paharpur, to install any Transformer. Gurmit Singh alongwith Nirmal Singh/Mohan Dass (Both ALMs) had gone to Paharpur, unauthorizedly/illegally without my knowledge by taking benefit of permit Nos. 30 and 31. Even, on 19.06.2009, no official work was to be done at the alleged site, at Paharpur. In this regard, a letter No. 815 dated 10.06.2009 was written by SDO (Distribution), PSEB to Chief Electrical Inspector, Govt. of Punjab, in which, it has been informed that every work at Sadhu Singh's Transformer, at Paharpur, is complete, in all respect, and no work has to be done at Paharpur, on 10.06.2009, till further requirement. So, no question arises, regarding doing any work at the alleged site, at Paharpur, on 19.06.2009 and further, a letter No. 8199 dated 06.07.2009, was issued from Chief Electrical Inspector, to SDO, Dhingi and only after this letter any work was to be performed. So prior to this office letter/order dated 06.07.2009, no work was to be done at Paharpur. I have been falsely implicated by complainant as well as by Nirmal Singh (ALM) and other PWs, in order to hide their own negligence, and further in order to escape from any liability from the department. I am innocent. I had no knowledge regarding any work, to be performed on 19.06.2009, at

Paharpur, nor there was any such work permit obtained by me to do any such work at the transformer, of Surjit Singh son of Sadhu Singh, resident of Paharpur”.

8. The accused also examined four witnesses in support of his innocence. Megh Singh, AEE, Store, Powercom from Nabha was examined as DW1. As per him, the present appellant was working under him. Gurmeet Singh, foreman, since deceased, was earlier posted in Sub Division Dhingi and his presence was being marked in the said Sub Division. Gurmeet Singh, foreman, was not working under the accused. On 19.06.2009, he had directed the appellant to remove shunt capacitor of 11 KV from Dhingi feeder and to reinstall the same at 11 KV Gurditpura feeder and no other work was assigned to him on that day. No other job was carried on by the accused on 19.06.2009 in village Paharpur and there were no directions from his office to the accused do to any other job. The accused in compliance of his orders got issued permit No. 30 from 66 KV Grid, Nabha and after doing the needful that permit was got cancelled by the accused himself. He further stated that there was no fault of the appellant in that accident. However, in his cross-examination, he admitted that he was no authority nor it was within his powers to fix the responsibility with regard to the incident dated 19.06.2009 and it was the Chief Engineer who had to hold the responsibility of the guilty official. The appellant also examined Bhajan Singh, Senior Executive Engineer, as

DW2. At the relevant time, he was working as Senior Executive Engineer, Divisional Office, PSPCL, Nabha. He also produced on record a copy of the charge sheet issued by the department to the present appellant. In his cross-examination, he admitted that at the time of the incident, he was not posted in Sub Division Nabha and he had only examined the report of the SDO while sitting in office. He had not visited the spot nor examined any witness himself. Manpreet Singh, LDC, Punjab State Power Corporation Limited was examined as DW3. He had produced on record the summoned record, i.e. personal file of Gurmeet Singh foreman (since deceased). He also brought on record the complaint registered as Ex.PH/3. Dr. Inderjit, Handwriting and Finger Print Expert was examined as DW4. As per him, he had carefully and thoroughly examined the signatures alleged to be of Gurmeet Singh Marked as Q1 on the entry No. 1/396 of the summoned complaint register of PSPCL and compared the same with the standard signatures of Gurmeet Singh. He also examined the signatures Mark A1 taken from the same entry 1/396 to find out whether the person who had written A1 had also written Q1 or not. On the basis of the observations made by him, he was of the opinion that the disputed signatures marked as Q1 was product of forgery by impersonation and did not tally with the standard signatures of Gurmeet Singh marked as S1 to S4, i.e. these were written by two different persons.

9. I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

10. Learned counsel for the appellant submitted that the appellant has been wrongly convicted by the trial Court. In fact, Gurmeet Singh (since deceased) had been doing unlawful and unauthorized work of installation of transformer in the field of Sadhu Singh and no work permit was obtained for doing any work at village Paharpur at the transformer of Surjit Singh. Since the deceased was neither working under the appellant nor he was under his control, he had been wrongly convicted by the trial Court. Still further, the trial Court wrongly held that even if it was assumed that the installation of new feeder was within the knowledge and direction of the appellant, he would still be liable. The appellant was not even aware of the fact that the deceased was doing any work rightly or wrongly and there was no way that he could have presumed that by the act of restoring electricity, some one could die. He next contended that there was no permit on record which stated that the appellant had obtained any permit to work, at the transformer of village Paharpur. Further, from the testimony of DW1 Megh Singh, officer of POWER COM from Nabha, it was apparent that the appellant was working under him and he had directed the appellant to remove the capacitor from Dhangi feeder and to install the same at 11 KV at Gurditpura feeder and the appellant did the needful and there was no role of appellant in

the occurrence, resulting in the death of Gurmeet Singh. The appellant had no knowledge with regard to any such act done by Gurmeet Singh, since deceased, for any work at village Paharpur and the appellant had no knowledge with regard to the death of Gurmeet Singh and no offence under Section 304-II IPC is made out against him. Even, Gurmeet Singh was not working as foreman under the control of the appellant, rather he was working under the control of Sub-Division Officer at Dhingi. He further submitted that during the departmental inquiry also, the appellant had been exonerated and the criminal liability had been wrongly fastened on him. Learned counsel further contended that even from the extract of the complaint register Ex.PH/3, it was evident that the appellant had never authorized Gurmeet Singh and his team to install a new transformer in the area of Paharpur. Even, the appellant had not signed the document Ex.PH/3. Learned counsel further contended that as per the case of the prosecution, the appellant had been negligent and without verifying the fact that whether the work had been completed, he ordered resumption of power and, thus, as per the case of the prosecution itself, at the most, the offence under Section 304-A IPC was made out against the present appellant. Learned counsel further contended that the appellant was a public servant and the act was done by him in his official capacity and good faith and was protected under Section 168

of the Electricity Act. Thus, the impugned judgment is legally unsustainable.

11. On the other hand, the learned State counsel submitted that the impugned judgment was based on correct appreciation of facts, evidence and the settled law. The trial Court had taken into consideration the evidence led by the prosecution and defence to hold that the present appellant had the knowledge of the fact that the Gurmeet Singh, since deceased, and his team were working on the electricity line and without verifying the fact as to whether the work had been completed, the present appellant had ordered the resumption of the power supply at the same place. Thus, the appellant had the knowledge that by causing such an act, he was likely to cause death of Gurmeet Singh. Thus, the impugned judgment is liable to be upheld by this Court.

12. In the present case, the entire prosecution evidence revolves around three documents, i.e. Permit No. 30 Ex.PB, Permit No. 31 Ex.DC and the complaint register Ex.PH/3. As per the document Ex.PH/3, on 19.06.2009, different works were assigned to a team comprising of Nirmal Singh, Banarsi Dass, Mohan Dass and Gurmeet Singh since deceased and they were specifically told to perform the following duties:-

(a) *to remove shunt capacitor from Dhingi feeder*

(b) *In the area of village Paharpur transformer was to to be shifted; to make repair of 100 KV transformer in the tubewell of Harnak Singh and to provide requisite load in the tube of Sadhu Singh at village Paharpur.*

(c) *to repair the switch of transformer of Puran Singh.*

Out of them Mohan Lal was allocated the work of changing the shunt capacitor and Nirmal Singh, Bansarasi Dass and Gurmeet Singh were deputed at the field of village Paharpur to remove the transformer. Even the appellant had obtained the Permit No. 30 and 31 for the purpose of changing the shunt capacitor on the 11 KV electricity line. Apart from that, Permit No. 30 Ex.P3 and Permit No. 31 Ex.DC had been issued by DW1 Megh Singh and were duly communicated to the appellant at about 8.45/8.50 a.m. and the said fact was also admitted by PW3 Anil Kumar in his cross-examination. Apart from that, even DW1 Megh Singh had admitted that on 19.06.2009, he had directed the appellant to remove the shunt capacitor of 11 KV from Dhangi feeder and to reinstall the same at 11 KV Gurditpura feeder. DW1 Megh Singh had issued the work permits No. 30 and 31 and were duly received by the appellant admittedly. Even, it is the admitted case of the defence also that the appellant had cancelled the work permits Ex.PB and Ex.DC. Thus,

after disconnection of the electricity supply under the permits No. 30 and 31, all pending works were to be done at Dhingi feeder.

13. Even though, the appellant had not disputed that he never authorized Gurmeet Singh and his team to install the new transformer of Paharpur in fields of Sadhu Singh, but this fact had been mentioned in Ex.PH/3, which has been duly proved by the prosecution. Even, from the testimonies of PW3 Anil Kumar and DW1 Megh Raj, the offences proved against the appellant.

14. While passing the impugned judgment, the trial Court had observed as under:-

“Now the question arises whether the accused's conduct amounted to culpable rashness or negligence? It depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. The accused very well knew that vide permit to work No. 30 some work is to be done on 11 KV electricity line under Dhingi feeder. No body had informed him that the work had completed and the electricity be resumed. He did not act as a prudent man. The permit was not issued for a limited period, rather it had to continue upto the completion of the work but without waiting the

completion report, he ordered to resume the electricity power supply. This fact is admitted by DW1 Megh Singh that after doing the needful, the accused had to cancel the permit Ex.P30 Ex.PB. Thus, the act of the accused was both rash and negligence”.

15. This Court also agrees with the above referred findings recorded by the trial Court. In the present case also, the appellant had no intention to cause the death of Gurmeet Singh, since deceased. At the same time, the appellant did not have the knowledge that the act done still in all probabilities will result into death. Thus, the appellant was wrongly convicted for the offence under Section 304 IPC.

16. It has been held by the Hon'ble Supreme Court in the matter of ***Mahadev Prasad Kaushik Vs. State of U.P., and another, 2008(4) R.C.R. (Criminal) 801*** as follows:-

“22. The question then is as regards issuance of summons under Section 304, IPC. Section 304 reads thus;

304. Punishment for culpable homicide not amounting to murder

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

23. Plain reading of the above section makes it clear that it is in two parts. The first part of the section is generally referred to as "Section 304, Part I", whereas the second part as "Section 304, Part II". The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

24. The Makers of the Code observed; "The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed".

25. *The Makers further stated; "It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion".*

26. *Before Section 304 can be invoked, the following ingredients must be satisfied;*

- (i) the death of the person must have been caused;*
- (ii) such death must have been caused by the act of the accused by causing bodily injury;*
- (iii) there must be an intention on the part of the accused*
 - (a) to cause death; or (b) to cause such bodily injury which is likely to cause death; (Part I) or*
- (iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).*

27. *Section 304A was inserted by the Indian Penal Code (Amendment) Act, 1870 (Act XXVII of 1870) and reads thus;*

304A. *Causing death by negligence 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.* 28.

The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC and covers those cases where death has been caused without 'intention' or 'knowledge'. The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.

29. There is thus distinction between Section 304 and Section 304A. Section 304A carves out cases 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 under Section 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

*30. In **Empress v. Idu Beg, (1881) ILR 3 All 776**, Straight, J. made the following pertinent observations*

which have been quoted with approval by various Courts including this Court:

"Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted".

31. Though the term 'negligence' has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do".

17. In fact, Section 299 of the Indian Penal Code defines the culpable homicide as causing of death by doing an act with the intention of causing of death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act, death is likely to be caused.

18. Under Section 300 of the Indian Penal Code, all the acts of culpable homicide amount to murder except what is specifically

covered by the exception to said Section 300. Section 304 of Indian Penal Code provides for punishment for the offences of culpable homicide not amounting to murder. However, the commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from slightest inaction or a mere lapse. Such allegations that the appellant had ordered resumption of the electricity, without even verifying the fact that the work had already been completed or not, would definitely make out a case under Section 304-A IPC and cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence, something more positive than a mere omission, serious lapse or gross negligence on the part of the named accused will have to be present. However, such ingredients of the offence under Section 304 IPC are conspicuously absent in the evidence of the present case. Even otherwise, the appellant and Gurmeet Singh, since deceased were working in the same department. Even, no evidence has been led by the prosecution to show that the present appellant was either inimical towards the deceased or had any simple grouse against the deceased. Even, it can never be presumed that the appellant ever wanted to cause any injury by any omission to the deceased or wanted to cause the death of the deceased. In fact, he had simply been negligent grossly in performing in his official duties and in such circumstances, the alternative argument of learned

counsel for the appellant that at the worst the offence under Section 304-A IPC is made out against the present appellant, is well taken and deserves acceptance by this Court.

19. Sequally, the appeal is partly allowed and the appellant is ordered to be convicted for an offence under Section 304-A IPC. The judgment of conviction dated 24.02.2012 passed by the learned Sessions Judge, Patiala, is accordingly modified to the said extent.

20. This Court is also cognizant of the fact that the the occurrence had taken place in the present case on 19.06.2009 and the appellant was aged about 45 years at the time of the said occurrence. Consequently, at present he must be aged about 60 years. Apart from that, during the course of hearing, the learned State counsel has placed on record the custody certificate of the appellant and as per the same, the appellant has already undergone the sentence of 01 year, 02 months and 09 days (including remissions). Thus, he has already faced the agony of trial/appeal for the last about 14 years and no useful purpose would be served by sending him behind the bars at this stage. Apart from that, he is the sole bread earner of the family and a lenient view should be taken while awarding sentence. Thus, the appellant is ordered to be released on probation on his furnishing personal bonds in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the trial Court/CJM, within a period of two months, subject to the condition that he would keep peace and be

of good behaviour, for a period of 2 years from the date of passing of this Court. The order of sentence of the trial Court is accordingly modified to that extent. However, it is made clear that in case the appellant/accused violates any of the conditions of the bond, then, the matter shall be placed before this Court for awarding him the sentence.

21. The appeal is accordingly disposed off.
22. Needless to mention that the indicated benefit of probation would not suffer any disqualification as regards the service benefits of the accused/appellant are concerned.

12.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking :

Whether reportable :

Yes/No

Yes/No