



Judgment

441 apeals91 & 93.07

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

CRIMINAL APPEAL NO.91 OF 2007

AND

CRIMINAL APPEAL NO.93 OF 2007

CRIMINAL APPEAL NO.91 OF 2007

Harshwardhan s/o Mohanrao Patil,
aged about 33 years, occupation – service,
r/o Arvi, district Wardha. (in jail). **Appellant.**

:: VERSUS ::

State of Maharashtra, through Police Station
Officer, Arvi PS, tahsil Arvi,
district Wardha. **Respondent.**

**Shri A.S.Mardikar, Senior Counsel assisted by
Shri Soumitra Kanetkar, Advocate for the Appellant.
Mrs.H.N.Prabhu, Additional Public Prosecutor for the
Respondent/State.**

CRIMINAL APPEAL NO.93 OF 2007

1. Dnyaneshwar s/o Barkuji Dongre,
aged about 54 years, occupation-service,
r/o Awaghad Ward, Arvi, district Wardha.

2. Ramesh s/o Laxmanrao Dhokle (Dhokane),
aged about 50 years, occupation service,
r/o Jalgaon (Belora), tahsil Arvi,

district Wardha.

3. Gopal s/o Rambhau Dhabode (Dhamode),
aged about 47 years, occupation service,
r/o Ramdeobaba Ward, Arvi, district
Wardha. Appellants.

:: VERSUS ::

State of Maharashtra, through Police
Station Officer, Arvi, P.S. Tahsil Arvi,
district Wardha. Respondent.

Shri R.M.Daga, Counsel for the Appellants.
Mrs.H.N.Prabhu, Additional Public Prosecutor for the
Respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/07/2025

PRONOUNCED ON : 30/07/2025

COMMON JUDGMENT

1. By these appeals, the appellants (the accused persons) have challenged judgment and order dated 14.3.2007 passed by learned Ad-hoc Additional Sessions Judge-1, Wardha (learned Judge of the trial court) in Sessions Trial No.120/2004.

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2. By the said judgment impugned in these appeals, the accused persons are convicted for offence punishable under Section 304-II read with Section 34 of the IPC and sentenced to undergo rigorous imprisonment for seven years by each of them and to pay fine Rs.1000/- by each of them, in default, to undergo further rigorous imprisonment for one month.

3. Brief facts of the prosecution case as emerge from the police papers and recorded evidence are as under:

Amol Deorao Wankhede, has lodged an oral report, being son of the Police Patil, as his father was not well, informing that death of Satish Dnyaneshwar Kirpane (the deceased) took place due to electrocution on 31.3.2004 at village Jalgaon. On the basis of the said report (Exh.68), the crime came to be registered. During investigation, the investigating officer has recorded statement of

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Dnyaneshwar Govindrao Kirpane, the father of the deceased, who alleged that he is having agricultural land at village Jalgaon having facilities of well water and electric motor-pump installed on his well. Prior to three months of the incident, an electric wire of the electric pole was broken and he made a complaint in register maintained by the MSEB. Despite the written complaint as well as the oral complaint, the accused persons, who are employees serving in the MSEB, did not reconnect the said connection by repairing the same. On 30.3.2004, he had been to Nagpur and on the next day i.e. 31.3.2004 he received a message from villagers that his son died due to electrocution in his field. He immediately along with his brother reached the village and came to know that his son received electric shock and died. On the basis of the said statement, the crime is registered and his statement is

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treated as oral report which is at Exh.73 and the FIR is at Exh.74.

4. After registration of the crime, the investigating officer has drawn spot panchanama, seized documents including the complaint register, recorded relevant statements of witnesses, and after completion of the investigation, submitted chargesheet against the accused persons.

5. As the offence registered is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court. Learned Additional Sessions Judge framed charge vide Exh.37. The prosecution has examined as many as 12 witnesses, which are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Ramchandra Lodhe, pancha on spot and inquest panchanamas	42

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2	Dasharath Ikhar, pancha on seizure of complaint register	45
3	Devidas Kirpane	50
4	Ramesh Chavan	51
5	Dr.Vaishali Dhoke, Medical Officer	52
6	Rajendra Dahake	57
7	Pankaj Honade, Junior Engineer of the MSEB	61
8	Amol Wankhede	67
9	Sharad Khadse, pancha on seizure	69
10	Dnyaneshwar Kirpane, the father of the deceased	72
11	Sahadeo Waghmare, pancha on seizure	80
12	Ashok Urade, the Investigating Officer	83

6. Besides the oral evidence, the prosecution placed reliance on spot panchanama Exh.43, inquest panchanama Exh.44, panchanama on seizure of register Exh.46, relevant entries in the register Exhs.47, 75, and 76, requisition letter to the medical officer Exh.53, postmortem report Exh.54, Annexure-13 maintained by the MSEB Exh.63, sketch of line Exh.65, accidental report

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Exh.68, report Exh.73, FIR Exh.74, seizure memo Exh.81, arrest panchanamas Exhs.87 to 89, letter to CA Exh.90.

7. On the basis of the oral as well as the documentary evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt. The incriminating evidence is put to the accused persons in order to obtain their explanations by recording the statements under Sections 313 of the CrPC. The defence of the accused persons is of total denial. After hearing both the sides, the Judge of the trial court was pleased to hold the accused persons guilty and sentenced them as the aforesaid.

8. Being aggrieved and dissatisfied with the finding of learned Judge of the trial court, the present appeals are preferred by the accused persons.

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9. Appellant Harshwardhan Patil, who was accused No.4, was serving as Junior Engineer in MSEB at the relevant time. Whereas appellants Dnyaneshwar Dongre (accused No.1), Ramesh Dhokle (accused No.1), and Gopal Dhabode (accused No.3) were serving as Linemen. During the pendency of these appeals, appellant Dnyaneshwar Dongre died and, therefore, the appeal is abated as far as he is concerned.

10. Heard learned Senior Counsel Shri A.S.Mardikar in Criminal Appeal No.91/2007; learned counsel Shri RM.Daga for the accused persons in Criminal Appeal No.93/2007, and learned Additional Public Prosecutor Mrs.H.N.Prabhu for the State. They submitted that from the entire evidence adduced by the prosecution, it nowhere reveals that the accused persons have caused the culpable homicide amounting to murder by causing the death of the deceased. The prosecution though examined

PW3 Devidas Kirpane, PW6 Rajendra Dahake, PW10 Dnyaneshwar Kirpane, the evidence of these witnesses nowhere shows that the accused persons were having knowledge as to their act that their act would cause the death of the deceased. There is distinction between intention and knowledge. From the evidence, it shows that there can neither be intention nor knowledge on the part of the accused persons that their act would result or likely to cause death of the deceased. The offence under Section 304 II of the IPC 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. As per the allegations, the accused persons, who are employees of the MSEB, had not taken cognizance of the complaint and death of the deceased is caused. The prosecution evidence as to the main grievance that the complaint of the

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informant registered in the Complaint Register itself is doubtful as the alleged Register was seized from the custody of PW3 Devidas Kirpane, who is uncle of the deceased. Bare perusal of the said Register shows that Exh.47 the entry dated 24.1.2004 appears to be interpolated after the alleged incident. Exhs.75 and 76 dated 2.2.2004 and 16.2.2004 show that earthing wire in the field of Dnyaneshwar got broken and there is current in the said wire. However, the evidence of Junior Engineer PW7 Pankaj Honade shows that the incident occurred due to clash of guarding wire attached to the PVC and Pole. Thus, there is no evidence that due to breaking of earthing wire the alleged incident has taken place. The only allegation against the accused persons is that cognizance of the complaint was not taken and, therefore, the alleged incident has occurred. There was no intention or knowledge to cause the death and, therefore,

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at the most, it would be dereliction in duty. Thus, the offence against the accused persons under section 304-II is not made out. As far as death due to negligence is concerned, there is no specific allegation that it was the accused persons due to whose negligence the alleged incident has taken place. The Executive Engineer is not examined to ascertain the exact cause of the incident. In fact, the accident has not taken place due to breaking of neutral wire, but it was taken place due to contact of second phase to PVC guarding wire. There is no evidence that either neutral or earthing wire was broken. As the prosecution failed to establish the charge, the accused persons deserve to be acquitted.

11. Learned counsel Shri R.M.Daga endorsed the same contentions as advanced by learned Senior Counsel for the accused.

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12. Per contra, learned Additional Public Prosecutor for the State strongly opposed the said contentions on the ground that the evidence of PW3 Devidas Kirpane, PW6 Rajendra Dahake, PW10 Dnyaneshwar Kirpane shows that despite of the complaint by the father of the deceased, no action was taken by the accused persons, which resulted into the alleged incident and death of the deceased is caused. As the accused persons are employees of the MSEB, they had not taken cognizance of the said complaint by the father of the deceased and the document i.e. Complaint Register and entries therein at Exhs.47, 75, and 76 sufficiently show involvement of the accused persons in ignoring the complaint and not taking action appropriately, which resulted into the death of the deceased and, therefore, the appeals deserve to be dismissed.

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13. Having heard both the sides, question arises for consideration is, whether the evidence on record is sufficient to hold that the accused persons have caused homicidal death of the deceased which does not amounting to murder.

14. To prove the charge against the accused persons, the prosecution placed reliance on the evidence of PW10 Dnyaneshwar Kirpane, the father of the deceased, who lodged the oral report against the accused persons.

15. As per the evidence of PW10 Dnyaneshwar Kirpane, he is an agriculturist having irrigated land and having well in it. The motor pump is installed in his well. Prior to three months of the incident, he made a complaint that an electric wire of an electric pole was broken and he made a complaint in the Register maintained by the MSEB, which was kept by officials of the MSEB at the Flour Mill of

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Sardar Khan Pathan. On the next day of breaking of the wire, he made the complaint. The officials of the MSEB did not reconnect the said wire. At the relevant time, accused Nos.1 to 3 were working as linemen and accused No.4 was working as Junior Engineer. He made oral complaints also on various occasions. As the accused persons have not taken any action to repair the said wire, the alleged incident has taken place on 31.3.2004 and caused the death of his son.

16. To corroborate the version of PW10 Dnyaneshwar Kirpane, the prosecution has examined PW3 Devidas Kirpane, who is uncle of the deceased. As per his evidence, his brother (the father of the deceased) has made complaint in the Complaint Register. On 2.4.2004, he had brought the said Complaint Register from the Floor Mill of Sardar Khan Pathan. He himself handed over the

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said Complaint Register to the police and the police seized the same by drawing seizure panchanama Exh.46.

17. PW4 Ramesh Chavan, is the another villager, who has also deposed that there was well and electric pump in the field of Dnyaneshwar Kirpane and the alleged incident has taken on 31.12.2004 and the death of the deceased was caused due to electrocution. His evidence further shows that prior to three months of the incident, Dnyaneshwar told him that the electric wire of the electric line installed is broken and he witnessed on the day of the incident that the electric wire was in a broken condition.

18. PW6 Rajendra Dahake, is the another villager, who has also corroborated the version of the complainant and tested that there is a well and electric motor pump in the field of Dnyaneshwar Kirpane. Prior to three months of the incident, electric wire installed to electric pole was cut

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due to heavy wind. Dnyaneshwar Kirpane made a complaint in the Complaint Register kept in the shop of Sardar Khan Pathan and Dnyaneshwar had disclosed to him about making of such complaint. The death of the deceased was caused due to electrocution.

19. During the cross examination of PW10 Dnyaneshwar Kirpane, it came on record that he has no personal knowledge about the incident. He has not stated in his report that the Complaint Register was kept at the shop of Sardar Khan Pathan. He admitted that the Complaint Book was at his house for two days.

On the basis of this admission, it is submitted by learned Senior Counsel for the accused that bare perusal of the complaint, entry which is at Exh.47 in the Complaint Register, apparently shows that it was inserted subsequently.

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20. The cross examination of PW3 Devidas Kirpane shows that he has taken the said Complaint Register from person who was working at the Floor Mill and, thereafter, kept in his house. The omission to the extent that he has not stated in his statement that his brother disclosed to him that he made complaint in the Complaint Register is not stated while recording his statement. His evidence shows that till seizure of the Complaint Register it was in his possession.

21. The evidence of PW4 Ramesh Chavan, as far as disclosure by Dnyaneshwar to him regarding the complaint, is omission which is proved by the defence during the cross examination of the investigating officer.

22. Coming to the evidence of PW6 Rajendra Dahake, who has in his cross examination stated that he did not make a complaint about cutting of wire to the MSEB. He

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admitted that the electric wire was tied to the electric pole.

23. Besides the evidence of these witnesses, the evidence of PW1 Ramchandra Lodhe shows that he acted as a pancha on spot panchanama. He deposed that he and the police saw the position of the electric pole situated in the said field. There is well in the said field having electric motor pump. There are three electric poles in the field of Kirpane. One electric pole is near the well. The neutral wire attached to the electric pole which was connected after 3rd electric pole was broken. 2nd and 3rd electric wires of 3rd pole were touching to the guarding of the said electric wires. The plastic cover of the guarding was damaged to some extent. The neutral wire broken was tied to the said electric wire by thin wire. His cross examination shows that the Complaint Register of MSEB was kept in the shop of Sardar Khan Pathan. The police

had not verified whether the motor pump was in working condition or not. Before stopping the electric supply, the electric motor pump was in a working condition. The electric wires affixed to the electric pole were at a distance of 20 feet from the ground. The police did not enquire as to who tied the said neutral wire to the electric wire at that time.

24. Recital of the spot panchanama shows that neutral wire was broken and it was wrapped around the electric pole. It further shows that broken wire was tied by the another wire on the pole.

25. PW2 Dashrath Ikhar, is the another pancha on seizure of the Complaint Register of the MSEB. As per his evidence, the police seized the Complaint Register of MSEB from PW3 Devidas Kirpane by drawing seizure panchanama. The cross examination PW2 Dashrath Ikhar

shows that PW3 Devidas Kirpane is paternal uncle of the deceased. His cross examination further shows that he did not enquire with PW3 Devidas Kirpane from how many days the same Complaint Register was kept at the Floor Mill.

26. PW9 Sharad Khadse and PW11 Sahadeo Waghmare are formal witnesses who have not supported the prosecution case.

27. PW8 Amol Wankhede, the son of the Police Patil, whose role is to the extent that he informed the incident to the police as his father was unwell.

28. Junior Engineer PW7 Pankaj Honade, was serving at Arvi. As per his evidence, on 31.3.2004 linemen Gopal Dhabode came to his office and reported the incident that one person died due to electrocution in the filed of one Kirpane of Jalgaon. He stated that he received a

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telephonic call from the Executive Engineer informing him about the incident. He visited the spot and observed that there was three phase and four wire lines in that field. The said dead body was lying near the electric pole. There was PVC guarding to the electric pole and earthing was provided from PVC guarding to the said pole upto the ground. The guarding of wire no.2 was partly burnt. Neutral wire of the said electric line was wrapped to 2nd electric pole and it was broken. He had prepared Annexure-13, Form No.2 and sketch of the wire. He submitted report to the Executive Engineer of the MSEB at Arvi. The said Annexure is at Exh.63. He has also prepared sketch of line which is at Exh.65. He prepared sketch as per factual position of the electric line situated on the spot. PVC guarding might have burnt due to sparking. The second phase wire was touching to the guarding was brunt. He admitted during cross

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examination that upper three wires of that line were having electric current and lower fourth line is a neutral wire. The second phase wire was touching to the guarding and if it got earthing then the electric fuse of transformer would be blown. In the present case, fuse of the transformer was blown. He further admitted that the Electric Inspector did not inspect the spot. In his presence, the electric wire of the said line was at height of 20 feet. He admitted that accused NO.4 was on leave from 22.3.2004 and he was also on leave on 31.3.2004.

29. Investigating Officer PW12 Ashok Urade, has narrated about the investigation carried out by him. During his cross examination, the omission which came in the evidence of PW10 Dnyaneshwar Kirpane is proved by the prosecution.

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30. To prove the homicidal death of the deceased, the prosecution has examined PW5 Dr.Vaishali Dhoke, who testified that she has conducted postmortem examination. The injuries sustained by the deceased were antemortem. The death of the deceased is due to electrical injuries. She admitted that injuries shown at Column No.17 are not sufficient to cause death in the ordinary course of nature. She further admitted that if any part of the body of a person comes in contact with live electric wire, he would sustain injury. There were no symptoms which are ordinarily noticed in case of receipt of electric shock by live electric wire.

31. On going through the evidence, the question whether the death of the deceased is homicide in the nature or it was by negligence due to the accused persons and whether the accused persons are authors of the crime in question requires to be decided considering the nature

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of the evidence available on record and the charge framed against the accused persons under Section 304-II of the IPC. At this stage, it would be appropriate to see Section 304 of the IPC.

32. In order to attract Section 304 of the IPC, it must be shown that the act committed by the accused persons amounts to culpable homicide not amounting to murder. Culpable homicide is defined in Section 299 of IPC which states as under:-

"299. Culpable homicide. - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1. - A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates

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the death of that other, shall be deemed to have caused his death.

Explanation 2 . - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

Explanation 3. - The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.”

33. Section 304 of the IPC deals with 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

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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 with the intention of causing death, or of causing such bodily injury as is likely to cause death.

34. Plain reading of the above said Section makes it clear that Section 304 is divided into two parts. The first part of the Section is generally referred to as "Section 304-I". Whereas, the second part as "Section 304-II". The first part applies where 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 without any intention or to cause such bodily injury as is likely to cause death.

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35. 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).

36. The said Section would be attracted if anyone commits culpable homicide not amounting to murder if the act is done with the knowledge that it is likely to cause

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death, but without any intention to cause death or to cause such bodily injury as is likely to cause death. Therefore, the requirement of Section 304II of the IPC is that the doer must have the knowledge that the act performed is likely to cause death or to cause such bodily injury as is likely to cause death, but without any intention to cause death. Thus, the basic ingredient of Section 304 Part II IPC is presence of knowledge and absence of intention. The doer must have the knowledge that the act performed by him would likely cause death etc but there should not be any intention to cause death.

37. This above being the legal frame work, applying the same to the present case, let us see the charge against the accused persons. According to the prosecution, the accused persons had not taken any action after receipt of the complaint by repairing the broken wire and, therefore, the alleged incident has taken place. The evidence on

record, especially PW10 Dnyaneshwar Kirpane, shows that he made a complaint prior to three months of the incident regarding breaking of wire.

38. Perusal of the Complaint Register Exh.46 and entry at Exh.47 show that the complaint was made informing that the wire connected to the pole is broken and, therefore, the motor is not in working condition and the wire is to be reconnected. The said complaint is dated 24.1.2004.

39. Exh.75 is the complaint dated 2.2.2004, which shows that the wire is broken and there is a current and, therefore, enquiry be made. As far as Exh.75 is concerned, perusal of the said entry reveals that it is inserted subsequently. As per the prosecution witnesses, the said Complaint Register was kept at Sardar Khan Pathan. Whereas, the evidence on record shows that it was seized

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from the house of uncle PW3 Devidas Kirpane of the deceased.

As such, the contention of learned Senior Counsel for accused Harshwardhan Patil, that interpolation of the said portion in the Complaint Register cannot be ruled out.

40. Junior Engineer PW7 Pankaj Honade, serving the MSEB, is the expert witness whose evidence shows that on inspection he found that there was three phase four wires lines in that field. There was PVC guarding to the said electric pole and earthing was provided to the said pole. The guarding of wire was burnt and neutral wire of said electric line was wrapped to second electric pole and it was broken. Exh.63 sufficiently shows that the incident occurred due to the electric shock due to earthing wire touching at second phase to the PVC guarding. Thus, Exh.63 reveals that the accident has not occurred due to

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the breaking of neutral wire, but it was occurred due to contact between earthing wire and second phase wire connected to PVC guarding. The sketch drawn by Junior Engineer PW7 Pankaj Honade also shows that the incident occurred due to the contact between two phases i.e. second phase touching to the guarding wire. Therefore, even, if it is accepted that the complaint was made regarding breaking of neutral wire, admittedly, the incident has not occurred due to breaking of neutral wire, but it was occurred due to contact between second phase wire to the PVC guarding wire. Regarding touching of second wire, admittedly, there was no complaint made by the father of the deceased. Thus, it is apparent that the alleged incident has not taken place due to the breaking of neutral wire, but it took place due to contact between the earthing wire and second phase wire connecting to the PVC guarding. Therefore, even, if the allegation is taken as

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it is, admittedly, the incident has not occurred due to the breaking of neutral wire regarding which the complaint was made. Therefore, even, if allegation is taken as it is, no *prima facie* case can be said to have been made out against the accused for committing the offence under Section 304-II of the IPC. Admittedly, there was no intention as well as the accused persons were not having knowledge that there was contact between two wires and apprehension of any untoward incident. Therefore, basic ingredients the commission of offence under Section 304-II of the IPC are absent in the present case.

41. Now, question is, whether the accused persons can be held guilty of offence punishable under Section 304 of the IPC and whether the accused persons are liable for punishment under Section 304-A of the IPC. The said Section is reproduced as under:

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“304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder, shall be punished with ¹ [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.

304-A. 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.”

42. Essential ingredients of Section 304-A of the IPC are that, (1) there must be the death of a person; (2) the

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death must be caused by the act of the accused; (3) the death must be caused due to any rash or negligent act of the accused; and (4) the act of the accused must not amount to culpable homicide.

43. It is well settled that Section 304-A of the IPC carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300.

It is also well settled that Section 304-A of the IPC by its definition totally excludes ingredients of Section 299 or Section 300 of the IPC.

44. Thus, there is a distinction between Section 304 and 304-A of the IPC.

Section 304-A deals with cases where death is caused by doing a rash or negligent act which does not

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amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 of the IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300.

45. 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.

46. In the case of **Empress of India vs. Idu Beg, reported in MANU/UP/0001/1881**, following observations are made:

"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

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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".

47. To impose criminal liability under Section 304-A of the IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*.

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48. Section 304-A of the IPC speaks about causing death by negligence. Simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law a very high degree of negligence is required to be proved to establish the offence. As observed, rashness means hazarding a dangerous or wanton act.

49. In the case of **Alister Anthony Pareira vs State Of Maharashtra, reported in 2012 (2) SCC 648**, the Hon'ble Apex Court observed that a person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under Section 304-II of the IPC.

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The Hon'ble Apex Court also proceeded to observe that there is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become involuntary act simply because its consequences were unforeseen. It has also been observed that where negligence or rashness is the cause of death and nothing more, Section 304A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304-II of the IPC may be attracted.

50. In the light of the well settled principles of law laid down by the Hon'ble Apex Court in catena of decision and this being the legal frame work, if the evidence of the present matter is taken into consideration, it would show allegation that despite of the complaint made by PW10 Dnyaneshwar Kirpane, who is the father of the deceased, to the MSEB as to breaking of neutral cable, no action was

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taken to repair it which resulted into the untoward incident and death of the deceased.

51. On going through the entire evidence, admittedly, accused Nos.1 to 3 were linemen and accused No.4 was Junior Engineer serving in the MSEB. No evidence is adduced by the prosecution to show that they were assigned with the work to inspect and repair the same. The prosecution has also not examined the Executive Engineer, who has submitted the report. The evidence of Junior Engineer PW7 Pankaj Honade shows that the incident took place due to contact between second phase cable to the PVC guarding, which was attached to the pole. This evidence shows that the incident has not taken place because of breaking of neutral wire, but it took place due to the contact between two cables.

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52. Thus, insofar as the facts of the present case are concerned, it is not established that the accused persons were responsible to carry out repairing work and with knowledge that death may be caused they have not carried out the work and, therefore, the alleged incident has taken place. There is no dispute that the death of the deceased is caused due to electrocution. However, on these basic facts, no evidence is adduced to make out case against the accused persons they committed the offence under Section 304-II or 304 of the IPC. In any case, the trial court swayed away by the fact that appellant Harshwardhan Patil, accused No.4, was Junior Engineer in MSEB and appellants Dnyaneshwar Dongre (accused No.1), Ramesh Dhokle (accused No.1), and Gopal Dhabode (accused No.3) were serving as Linemen and cognizance of the complaint by the father of the deceased was not taken. In fact, learned Judge of the trial court ought to have

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considered that the prosecution has to establish beyond reasonable doubt that these are accused persons who are responsible for the act of not repairing the said cables and having knowledge about the fact of breaking cables and thereby caused the death. In fact, the alleged incident has not taken place due to the breaking of cable, which was complained of, but it was due to contract between two cables. Thus, the evidence on record is not sufficient to establish the charge against the accused persons and, therefore, both the appeals deserve to be allowed. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Appeals are **allowed**.

(2) The judgment and order dated 14.3.2007 passed by learned Ad-hoc Additional Sessions Judge-1, Wardha in

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Sessions Trial No.120/2004 is hereby quashed and set aside.

(3) The accused persons are acquitted of the offence for which they are convicted and sentenced.

(4) The accused persons be set at liberty forthwith, if they are not required in any other offence.

Appeals stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!