

(2023) 12 CHH CK 0043
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1320 Of 2016

Bhuneshwar Nishad

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 299, 300, 304, 304I, 304II, 304A, 304AII
Code Of Criminal Procedure, 1973 — Section 313, 374(2), 437A
Central Electricity Authority (Measures relating to Safety and Electric Supply)
Regulations, 2010 — Section 12, 29
Electricity?? Act, 2003 — Section 153, 139

Citation : (2023) 12 CHH CK 0043

Hon'ble Judges : Sanjay K. Agrawal, J; Sanjay S. Agrawal, J

Bench : Division Bench

Advocate : Vipin Tiwari, Ashish Tiwari

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J

1. Invoking appellate jurisdiction of this Court, the present criminal appeal under Section 374 (2) of CrPC has been filed by the appellants herein calling in question the legality, validity and correctness of the judgment of conviction and order of sentence dated 13.7.2016 passed by Special Judge under Electricity Act, District Balod in Special Case No.6/2015 whereby each of the two appellants herein have been convicted and sentenced in the following manner :-

Conviction

Sentence

1. U/s 304/34 of IPC

Imprisonment for Life and fine of Rs.3000/- and in default of payment of fine, to undergo additional R.I. for 3 months.

2. U/s 139 of the Electricity Act, 2003

Fine of Rs.5000/- and in default of payment of fine amount, to undergo R.I. 5 months.

2. Brief facts of the case as projected by the prosecution and accepted by the Trial Court are that:-

(i) On 20.4.2025 between 7-9 p.m. at Village Pond under Police Station Gurur, District Balod, the two appellants herein unauthorisedly laid naked centering wire at their agriculture field and flown electric current through it and Bhupendra Sahu, Tomesh Halba, Kuleshwar Gond & Nomendra Sahu, total four persons, came in contact with that live/naked electric wire laid therein and succumbed to electrocution on the spot.

(ii) The matter was reported to Police Station Gurur by PW-1 Dayaram and Merg Intimations in respect of the death of Bhupendra Kumar, Nomendra Sahu, Kuleshwar Gond & Tomesh Halba were recorded vide Exhibits P-1 to P-4. On the basis of Merg Intimations, FIR (Exhibit P-5) was registered against the two appellants herein for the offence punishable under Section 304/34 of IPC on the ground that at Village Pond, on 20.4.2015, between 7-9 p.m., when cattle of Bhupendra Sahu did not return home, he along with Nomendra Sahu, Kuleshwar Gond and Tomesh Halba went to search for his cattle at village fields and there they came in contact with live/ naked electricity wire laid by the appellants at their field to protect the crops from animals, and died on the spot due to electrocution.

(iii) During the investigation, it was found that appellants were farming on the land bearing Khasra No.136/2, area 0.79 hectare and Khasra No.135, 136, area 0.44, 0.56 hectare situated at Patwari Halka No.36 and irrigating their field by taking temporary electricity connection and, on the date and time of offence, they unauthorisedly used 6mm naked centering wire all around their fields and flown electric current through the said naked electric wire with which the four deceased persons herein came in contact and died due to electrocution. Spot Map of the place of incident was prepared vide Exhibit P-6 and Nazri Naksha prepared by Patwari is Exhibit P-6. Appellants were arrested vide Exhibits P-8 & P-9. Memorandum Statement of A-1 Bhuneshwar Nishad was recorded vide Exhibit P-10 pursuant to which, electric boards, centering wire, electric wire, iron poles, wooden poles, etc., were recovered vide Exhibit P-11. Inquest proceeding was conducted vide Exhibits P-32 to P-35 and the dead-bodies of Bhupendra Sahu, Tomesh Halba, Nomendra Sahu and Kuleshwar Gond were subjected to post-mortem which was conducted by Dr. G.R. Rawate (PW-8) vide Exhibits P-23 to P-26 in which the cause of death of the four deceased persons has been shown to be, due to paralysis of medullary respiratory center and cardiac arrest and their death was stated to be accidental in nature.

(iv) Vide Exhibit P-20, Junior Engineer Kuleshwar Prasad Vaika gave his report that though temporary electricity connection was provided to the appellants for

agriculture and irrigation purpose, but they unauthorisedly used centering wire and flown electric current through the same all around their field leading to the casualties and thereby the appellants flouted regulations 12 & 29 provided in the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. Accordingly, final report was filed vide Exhibit P-37.

3. After completion of the investigation, the two appellants herein were charge-sheeted for the offences punishable under Sections 304/34 of IPC and Sections 12 & 29 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. The matter was put to trial before the Special Court constituted under Section 153 of the Electricity Act i.e., the Special Judge under Electricity Act, Balod in the instant case, where the case was registered as Special Case No.6/2015 and charges under Sections 304/34 of IPC and Section 139 of the Electricity Act were framed against the appellants, to which the appellants abjured their guilt, took a plea of false implication and entreated for trial.

4. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 10 witnesses and exhibited 37 documents. In defence, Guharam has been examined as DW-1 and Ration Card of Guharam has been relied on as Exhibit D-1C. Statement of both the appellants herein were recorded under Section 313 of CrPC in which they denied the circumstances appearing against them in the evidence brought on record, pleaded innocence and false implication.

5. After conclusion of the trial, the Trial Court, by impugned judgment dated 13.7.2016, on appreciation of oral and documentary evidence available on record, has reached to the conclusion that the prosecution has been able to duly establish its case beyond reasonable doubt and accordingly convicted both the appellants herein for the offences punishable under Section 304/34 of IPC and Section 139 of the Electricity Act and sentenced each of them as mentioned in the table shown in para-1 of this judgement, which led the appellants to file the present criminal appeal.

6. Mr. Vipin Tiwari, learned counsel appearing for the appellants, would submit that taking into consideration the evidence available on record, at best, the case of the appellants would fall under Section 304A of IPC [causing death by negligence] and not under Section 304 of IPC and their sentence is liable to reduced to the period already undergone by them in jail as they have already completed the maximum sentence prescribed under Section 304A of IPC and the appeal deserves to be allowed accordingly.

7. Per contra, Mr. Ashish Tiwari, learned Government Advocate, would support the impugned judgment and submit that on account of unauthorised use of electricity by the appellants through the naked electric wire over the fencing at their agriculture field, the four deceased persons in the instant case came in contact with live electric wire and succumbed to electrocution on the spot and

therefore the offence would fall under Section 304 of IPC and the Trial Court has rightly convicted the appellants for the said offence and the appeal deserves to be dismissed.

8. We have heard learned counsels for parties, considered their rival submissions made herein-above and have also gone through the records with utmost circumspection.

9. The question whether the death of four deceased persons herein is homicidal in nature or it was by negligence of the two appellants herein and whether the appellants are authors of the crime in question will be decided together considering the nature of evidence available on record and the charge framed against the appellants under Section 304 of IPC.

10. At this stage, it would be appropriate to notice the distinction between Section 304 of IPC and Section 304A of IPC.

11. In order to attract Section 304 of IPC, it must be shown that the act committed by the accused amounted 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 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.

In order to bring an act within the ambit of culpable homicide, it must be shown that a person has caused death by doing an act and he had done so :

- (i) with the intention of causing death or,
- (ii) with the intention of causing such bodily injury as is likely to cause death; or
- (iii) with the knowledge that he is likely by such act to cause death."

12. In the matter of Juggankhan v. The State of Madhya Pradesh AIR 1965 SC

831, the Supreme Court has held the medical practitioner guilty under Section 304A of IPC, when he administered poisonous medicine to patient without studying its effect, observed as under:-

"12. The appellant was charged in the alternative under s. 304A. The learned counsel for the appellant urges that the ingredients of s. 304A have not been established inasmuch as it was not a rash or negligent act. We are unable to accept this contention. Stramonium and a dhatura leaf are poisonous. The appellant was registered as a Homoeopath, and in Homoeopathy a dhatura leaf is never administered as such. This much he admits himself. According to the evidence on the record, in no system of medicine, except perhaps in the Ayurvedic system, the dhatura leaf is given as cure for guinea worms. It seems that the appellant prescribed the medicine without thoroughly studying what would be the effect of giving 24 drops of stramonium and a leaf of dhatura. It is a rash and negligent act to prescribe poisonous medicines without studying their probable effect..."

13. In order to decide the plea raised at the bar, it would be profitable to notice Section 304A of IPC, which states as under:-

"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."

14. The following are the ingredients of Section 304A of IPC:-

" (i) That the accused caused the death of any person;

(ii) That such death was caused by the accused doing any rash act;

or

(iii) That such death was caused by the accused doing any negligent act; and

(iv) Such a death did not amount to culpable homicide."

15. It is well settled law that Section 304A 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 of IPC. It is also well settled that Section 304A of IPC by its definition totally excludes the ingredients of Section 299 or Section 300 of IPC. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide.

16. In the matter of State of Gujarat v. Haidarali Kalubhai (1976) 1 SCC 889, the Supreme Court explained the relative scope of two Sections namely 304A and 304 (Part II) of IPC. Their Lordships observed pertinently as under:-

"10. Section 304A by its own definition totally excludes the ingredients of Section 299 or Section 300 IPC. Doing an act with the intent to kill a person or

knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, section 304A has to make room for the graver and more serious charge of culpable homicide. Does this happen in this case?"

17. Thereafter, again in the matter of *Balwant Singh v. State of Punjab* and another 1994 Supp (2) SCC 67, their Lordships of the Supreme Court has clearly held that Section 304A applies to the offence outside the range of Section 299 and 300 of IPC. The provision of Section 304A of IPC would apply to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death and clearly held as under:-

"8. Then the question would be whether an offence under Section 304-A IPC is made out? The provisions of this section apply to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. Therefore this provision is directed at offences outside the range of Sections 299 and 300 IPC and obviously contemplates those cases into which neither intention nor knowledge enters. The words "not amounting to culpable homicide" in the section are very significant and it must therefore be understood that intentionally or knowingly inflicted violence directly and wilfully caused is excluded. The section applies only to such acts which are rash or negligent and are directly the cause of death of another person. In other words, a rash act is primarily an overhasty act as opposed to a deliberate act but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient and this depends on the circumstances in each case."

18. Thereafter, again in the matter of *Shankar Narayan Bhadolkar v. State of Maharashtra* (2005) 9 SCC 71, the Supreme Court defining distinction between Section 304A and 304 (Part II) of IPC has held as under:-

"18. Coming to the plea of the applicability of Section 304A it is to be noted that the said provision relates to death caused by negligence. Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. The provision relating to offences outside the range of Sections 299 and 300 IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304A. It 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 in Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a persons' death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304A IPC has to make room for the graver and more serious charge of culpable homicide."

19. Again, their Lordships of the Supreme Court in the matter of Naresh Giri v. State of M.P. (2008) 1 SCC 791, highlighted the relative scope of Section 304 and 304A of IPC by holding as under:-

"7. Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.

8. Section 304-A 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. If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor."

20. Similarly, in State of Rajasthan v. Chhittarmal (2007) 10 SCC 792, in a case where the death was caused by fixing of live naked electricity wire and where the accused alleged to have fixed live naked electricity wire on the drain for supplying water which was in between the fields of the deceased and the accused with intention of killing him due to enmity between them, their Lordships have held that there was neither intention nor knowledge to cause death established from the circumstantial evidence and the defence version was found to have been more probable and held that the High Court rightly altered the conviction from Section 302 to Section 304A of IPC.

"9. "18. Coming to the plea of the applicability of Section 304A it is to be noted that the said provision relates to death caused by negligence. Section 304A applies to cases where there is no intention to cause death and no knowledge

that the act done in all probabilities will cause death. The provision relates to offences outside the range of Sections 299 and 300 IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304A. It 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 in Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a persons' death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304A IPC has to make room for the graver and more serious charge of culpable homicide.

19. In order to be encompassed by the protection under Section 304A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304A has no application."

21. Coming to the facts of the present case, in the light of the principles of law laid down in the aforesaid decisions of the Supreme Court, it is quite vivid that the Trial Court has convicted the two appellants herein for the offence under Section 304 of IPC holding that they have laid centering wire at their agriculture field and flown electric current through the same and the four deceased persons herein came in contact with live electric wire and died due to electrocution. However, the Trial Court did not record any specific finding that there was intention as well as knowledge on the part of the appellants so as to establish the offence under Section 304 (Part I) or for that matter under Section 304 (Part II) of IPC. In the matter of Arjun v. State of Chhattisgarh (2017) 3 SCC 247, the Supreme Court has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

"20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under :(SCC p. 220, para 7)

"7. To invoke this exception four requirements must be satisfied, namely,

(I) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri)

1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

"9. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provisions means "unfair advantage"."

22. In Arjun (supra), the Supreme Court has held that when and if there is intent and knowledge, the same would be case of Section 304 (Part-I) of IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 (Part-II) of IPC. In view of above-stated legal position, the prosecution in the instant case has failed to establish that there was intention as well as knowledge on the part of the appellants in flowing electric current in the centering wire laid at their agriculture fields, as their object in laying the centering wire with electric current at their agriculture field was to save their crops from animals. Though there is negligence on the part of the appellants to cause death but it has not been established that the appellants had any intention or knowledge to cause death by flowing electric current in the centering wire. Under the circumstances, the conviction of the appellants for the offence punishable under Section 304 of IPC is absolutely unjustified and since the death of four deceased persons herein has been caused due to negligence on the part of the appellants, their conviction is liable to be converted to Section 304A of IPC.

23. Accordingly, we set aside the conviction of the appellants for the offence punishable under Section 304/34 of IPC and sentence of Imprisonment for Life awarded thereunder. Instead, we convict the appellants for the offence punishable under Section 304A of IPC. However, the fine amount of Rs.3000/- each with its default clause is hereby maintained. Further, the conviction of the appellants for the offence punishable under Section 139 of the Electricity Act and

sentence of fine of Rs.5000/- each with its default clause awarded thereunder, also stands maintained. The fine amounts so deposited shall be disbursed in equal proportion to the legal heirs of the four deceased persons herein.

24. Since A-1 Bhuneshwar Nishad is in jail from 22.4.2015 and thereby already suffered the maximum sentence awarded under Section 304A of IPC, he be released forthwith, if not required in any other offence. Since A-2 Guharam Nishad was also in jail from 22.4.2015 and he was granted bail only on 15.11.2018, thereby he has also suffered the maximum sentence under Section 304A of IPC and therefore he is set at liberty. He need not surrender but his bail-bonds shall remain in force for a period of six months in view of the provisions contained in Section 437-A of CrPC.

25. This criminal appeal is partly allowed to the extent indicated herein-above.

26. Let a certified copy of this judgment along with the original record be transmitted forthwith to the concerned Trial Court and the Superintendent of Jail, for necessary information and action.