

(1991) 12 GUJ CK 0013
In the Gujarat High Court

Case No : Criminal Appeal No. 1045 of 1982 with Appeal No. 1086 of 1982

Kalaji alias Prahladji Keshaji

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 27-12-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Penal Code, 1860 (IPC) — Section 304, 304A, 34
Probation of Offenders Act, 1958 — Section 6

Citation : (1992) CriLJ 2397 : (1992) 1 GLR 747

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Advocate : D.T. Soni, for Mukund M. Desai, for the Appellant; M.A. Bukhari, Assistant Public Prosecutor, for the Respondent

Judgement

B.S. Kapadia, J.—Criminal Appeal No. 1045 has been filed by the original accused, who is convicted for the offence u/s 304, Part II of the Indian Penal Code and sentenced to six months R.I. and a fine of Rs. 250/- in default, one month R.I., by the learned Additional Sessions Judge, Narol by order dated 31st Aug. 82 in Sessions Case No. 35/89.

2. The State has filed the appeal u/s 377 of the Criminal Procedure Code for enhancement of sentence against the said accused.

3. The present appellant accused was charged with one another accused Darji Chunilal Jivram for the offence u/s 304 read with Section 34 of the Indian Penal Code on the allegation that on 17th Aug. 81 at about 2-30 p.m. at village Hansalpur, Tal. Viramgam, Dist. Ahmedabad, both the accused committed homicide not amounting to murder, causing death of Patel Natwarbhai Kanjibhai of the same village and that the same offence was committed in furtherance of the common intention of both the accused and thereby committed offence punishable u/s 304 read with Section 34 of I.P.C.

4. The prosecution case in short can be stated as under:--

The original accused No. 2 who is now acquitted by the Trial Court was the owner of the flour mill, while the present appellant-original accused No. 1 was working in the said flour mill. The present appellant had kept his bicycle near the wall of the said flour mill where there was an electric wire which was hanging. The electric wire was live and was connected with the said bicycle. At about 2-30 p.m. the deceased Natvar had gone to the flour mill, when he touched the cycle, he felt electric shock on account of the electric current and he was thrown away. He became unconscious and ultimately he died. The complainant Laxman Amthabhai had filed the complaint at Ex. 14. Thereafter, the matter was investigated and ultimately, after investigation was over, the charge-sheet was filed and, therefore, the case was committed for trial. The learned Sessions Judge, after recording the evidence and also further statement of accused and hearing the Advocate, has passed the aforesaid sentence against accused No. 1 only, who, is appellant before me.

5. In this case, there is sufficient evidence to show and particularly the medical evidence, which shows that the deceased died on account of electric shock and this aspect is not challenged. Mr. D.T. Soni, appearing on behalf of the appellant-accused has very strongly argued before me that this is not a case wherein the conviction u/s 304, Part II can be sustained. He submits that even assuming the evidence of the prosecution to be correct, then also this would be a case at the most u/s 304A and this very ground is also raised in the appeal memo. He has also relied on the judgment in the case of Cherubin Gregory Vs. The State of Bihar, . He therefore submits that the conviction u/s 304, Part II should be set aside. He further submits that even if on this evidence the accused appellant is convicted for offence punishable u/s 304A, no sentence of imprisonment can be passed on him inasmuch as on the date of the offence, he was below 21 years of age and as per Section 6 of the Probation of Offenders Act, no sentence of imprisonment can be passed without obtaining the report of the Probation Officer and without recording special reasons for the purpose of awarding the sentence of imprisonment.

6. I have carefully gone through the evidence with the assistance of the learned Additional Public Prosecutor Shri Bukhari. He has pointed out that so far as the evidence of Laxmanbhai is concerned, he is Deputy Sarpanch and he has already stated in his deposition that when he came to know the story about electric current flowing even while touching the wall of the flour mill, he went to the flour mill and enquired from the present appellant as to what was the real fact and at that time the present appellant-accused told him that the boys are throwing dust while the grinding operation of the flour mill is going on and he is harassed and, therefore, at the instance of his boss, he has applied the current. Referring to the date of incident he has stated that when he came to know about the electric shock to the boy, he went to the flour mill and the boy was on the said flour mill. Many persons were gathered there. People told that he had received electric shock and he has fell down. At that time the present appellant was not present and thereafter, he made report to the police. He has been cross-examined, but

nothing material is brought out. Similarly, there is also the evidence of Govabhai Chhaganbhai P.W. 2 Ex. 14 and in the evidence he has stated that Kalaji was doing the work of weighing the food-grains and the flour. He has stated in the deposition that when he entered the flour-mill, deceased Natubhai was there and nearby there was a cycle by the side of the electric board. Deceased Natubhai immediately raised a shout and fell down. He enquired from Kalaji what happened to him and then Kalaji told him that he has received electric shock. He got up from the weighing scale and pulled down the live wire which was tied on the rear wheel of the bicycle. Thereafter, he asked Govabhai to wait there as he went to call the doctor at Becharaji. Thereafter, Laxmanbhai i.e. complainant came. This witness has also been cross-examined, but nothing material to contradict the same has been brought on record. He has also denied the suggestion that Kalaji was not present at that time. There is also the evidence of one Abheysinh P.W. 4 Ex. 16, who also had felt electric shock before the present incident. He had an electric shock when he had gone for grinding his cereal to the said flour-mill. At that time the said wire was tied with the window and when he enquired why the wire was tied, the accused told that he had not tied it, but he had smiled. Then he untied the wire. However, Abhesinh does not remember the date of that incident. He has further clarified that the said incident had taken place before 10 days of the present incident in which Natubhai has received electric shock. This apart, there is also the evidence of Babaldas Kayaldas P.W. 7 Ex. 19. He has proved the panchnama Ex. 20. This is in respect of the place where the offence was committed. It is clearly pointed out in the panchnama also that there is an electric board in the eastern side, there are two switches in one metre, there was a board fitted with light. He also saw one piece of hanging wire and that was lying on the earth. This discloses that the live wire was taken out from the electric board and it was connected with the bicycle on the date of the incident. To that extent the prosecution clearly proves the case against the accused No. 1 -- the present appellant. Now the question arises as to whether this is a case where the act can be said to have been with the intention or knowledge or it is a negligent act. The fact remains that the live wire was connected with the bicycle and on account of that the deceased got a shock when he touched it. Normally everyone would have knowledge that when a live wire is touched, one would get shock, but whether from that only act, can it be inferred that it is with the intention or knowledge on the part of the present accused to cause injury which is likely to cause death. It is true that if at all he wanted to do away with the mischief which was alleged to have been played by the children by throwing mud when the grinding operations going on, he ought to have placed a sign board, a caution or warning for not touching the bicycle or coming nearby it and as it has not been done in the present case, it amounts to negligence on his part. If he has not so done and somebody touches, it would be on account of his negligence and not on account of his knowledge. This aspect, the learned Judge has not considered anywhere in the whole of the judgment. It may be observed that whether it is an intentional act or act with the knowledge or a negligent act, is to be considered from the facts of each and every case. It

cannot be said, merely because death has taken place on account of the electric current that it is an offence of murder or culpable homicide.

7. Here in the present case, considering the facts and circumstances of the case, it can never be inferred as there is no evidence to suggest that it was the intention on the part of the present appellant to kill any person by giving electric shock, nor he had any knowledge as such that Natubhai would touch it and he would succumb to electric shock and, therefore, at the most his act would amount to an act of negligence in not placing the sign board or warning and therefore the case would be clearly covered u/s 304A of the Indian Penal Code. In that view of the matter, the conviction and sentence awarded to the accused No. 1 -- the appellant for the offences punishable u/s 304 Part II cannot be sustained and, therefore, it is hereby set aside. But looking to the facts and circumstances of the case, the accused can be convicted only of an offence punishable u/s 304A. The argument of Mr. Soni is also supported by the aforesaid Supreme Court judgment.

8. The next question therefore would be what should be the sentence. Undisputedly the accused was of 19 years of age on the date when the offence was committed. It is so stated in his plea which is recorded at Ex. 5. Therefore, admittedly he was below 21 years of age and therefore without recording the special reasons and without considering the report of the Probation Officer, no sentence of imprisonment can be given. He is very young boy and, therefore, out of negligence and sheer mischief this offence has been committed by him. Therefore, he deserves some sympathy and lenient treatment in the matter. It is true that one human life is lost on account of his negligence, but the justice can be met by imposing proper fine on him and also passing the order for compensation out of it. Looking to the facts and circumstances of the case, after hearing the learned Advocate Mr. Soni on the point of sentence, it appears that the fine of Rs. 3000/- would meet with the ends of justice for the offence u/s 304A. Accordingly, the appeal filed by the appellant is allowed. His conviction and sentence for the offences punishable u/s 304, Part II is hereby set aside but the appellant is convicted for offence u/s 304A of the I.P.C. and he is sentenced to pay a fine of Rs. 3,000/- and when the fine is recovered, out of the said fine, an amount of Rs. 2,500/- may be given to the dependents of the deceased. In that view of the matter, the appeal filed by the State being Criminal Appeal No. 1086/82 is dismissed.