

(2011) 08 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : 561-A Cr.P.C. No. 5 of 2011, B.A. No. 9 of 2011 and Cr, M.P. No. 3 of 2011

Sham Singh and Another

APPELLANT

Vs

State of Jammu & Kashmir and Another

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561A
Ranbir Penal Code, 1989 — Section 300

Citation : (2011) 3 JKJ 132

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Suram Chand, a temporary employee of the Power Development Department of the State Government was laying Electric

Lines on the newly Erected Pole after switching off the Electric Current at the Transformer, on April 30, 2009 at village Achhar, when Abdul

Majid, an employee of the same Department, who was not posted in that area, switched on the Electric Current, as a result whereof, Suram

Chand was electrocuted. FIR No. 75 of 2009 was registered in this respect at Police Station, Banihal.

2. During the course of investigation of the case, it transpired that the deceased had given money to Abdul Majid to seek regularization in service,

which, however, did not mature and the deceased had been demanding the money back from Abdul Majid, which he was avoiding.

3. According to the evidence collected during investigation of the case, Abdul Majid had switched on the Electric Current despite having been

cautioned not to do that as Suram Chand was busy laying the electric lines on the Pole. Mr. Abdul Majid is alleged to have switched on the

Electric Current to save himself from the liability of paying Rs. 40,000/- to the deceased which he had taken from him to facilitate his regularization

in service. The Investigating Agency, ultimately, came to the conclusion that a case for commission of offence punishable u/s 304 Part-II RPC was

proved against Abdul Majid.

4. Learned Sessions Judge, Ramban found a prima facie case u/s 304 Part-II RPC made out against Abdul Majid and charged him accordingly.

5. The complainant has approached this Court by his Petition u/s 561-A Cr.P.C. seeking modification of the charge urging that the learned

Sessions Judge had erred in omitting to frame Charge u/s 302 RPC which was, prima facie, made out on the basis of the evidence collected by the

Investigation.

6. Abdul Majid has also approached this Court for his release on bail pending trial.

7. Learned Sessions Judge does not appear to have taken into consideration the evidence collected during investigation of the case which suggests

that the accused, who was a permanent employee of the Power Development Department, had reasons to believe that his act of switching on the

Fuse of the Transformer, would result in escape of high voltage Electric Energy, which was likely to result in causing such bodily injury to the

deceased, which was likely to cause his death. It is also in the evidence that the place where the deceased was working on the electric Pole was

visible to the accused.

8. Before considering as to whether the case projected by the prosecution on the strength of the evidence collected by the prosecution, justified

grounds, for presuming that the accused had committed the offence of Culpable Homicide amounting to Murder or Culpable Homicide not

amounting to Murder, the learned Sessions Judge was required to keep in mind the provisions of Section 300 RPC and various Sub Clauses

appearing thereunder, to come to the right conclusion as to what charge needed to be framed against the accused.

9. Learned Sessions Judge does not appear to have taken note of the provisions of Clause fourthly of Section 300 RPC and her omission so to do

has resulted in an error apparent on the face of records which if not corrected

would result in failure of justice.

10. The order passed by learned Sessions Judge without considering as to whether or not the provisions of Clause fourthly of Section 300 RPC

was attracted in the facts and circumstances of the present case, cannot, therefore, be sustained.

11. The trial Court is required to examine the matter again.

12. This Petition, therefore, succeeds and is, accordingly, allowed setting aside learned Sessions Judge Ramban's Order of December 16, 2010.

The case is remanded to the trial Court for framing such Charge(s) against the accused, as warranted under law, on the material relied upon by the prosecution.

13. Looking to the seriousness of the Charge and the stage when the prosecution evidence has yet to be examined, it may not be appropriate to consider the petitioner's release on bail at this Stage.

14. No case for admitting him to bail has, therefore, been made out at this stage. 561-A Cr.P.C. No. 5/2011 and Bail Application No. 9/2011 are disposed of accordingly.