
(2011) 04 SHI CK 0176
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 513 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Kama Nand and Another

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 336, 337, 338

Citation : (2011) 04 SHI CK 0176

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—This appeal is directed against judgment dated 4.6.2004 passed by learned Chief Judicial Magistrate, Kinnaur at Reckongpeo acquitting the Respondents for offences punishable under Sections 336, 337 and 338 IPC.

2. The prosecution case in brief is that P.W. 2 Raj Kumar on 11.12.1999 at about 10 A.M. had gone to Chhodur Dhar to graze his cattle. One sheep stuck in the stay wire of the electric pole, so he went there to disengage the said sheep, his hand touched the stay wire and he became unconscious. He was taken to Civil Hospital, Nichar and then to IGMCH, Shimla. He remained under treatment in PGI, Chandigarh. On 1.1.2000 P.W. 1 Durga Singh father of the injured made a complaint Ex. P.W. 1/A to the police. The statement Ex. P.W. 9/A of injured was recorded u/s 154 Code of Criminal Procedure and thereafter FIR Ex. P.W. 7/B came to be registered. On completion of the investigation, the Respondents were challaned for offences punishable under Sections 336, 337 and 338 IPC. The notice of accusation was put to the Respondents, they denied the notice and pleaded not guilty. The prosecution has examined 11 witnesses. The Respondents were examined u/s 313 Code of Criminal Procedure. They denied the prosecution case. On conclusion of the trial the learned Chief Judicial Magistrate acquitted the Respondents, hence appeal.

3. I have heard the learned Counsel for the parties and have also gone through the record. P.W. 1 Durga Singh, has stated that accident took place because there was no isolator in the stay wire. He is not an eye witness to the occurrence. P.W. 2 Raj Kumar is the injured. He has stated that he had gone to graze the cattle in the orchard and suddenly his hand touched the stay wire. Thereafter he does not know what happened to him. He was electrocuted and became unconscious. He has stated that Manoj Kumar was with him. P.W. 3 Manoj Kumar has corroborated the statement of P.W. 2 Raj Kumar. He has also stated that there was no isolator in the stay wire.

4. P.W. 4 Inder Dass is not an eye witness. P.W. 5 is a witness to recovery memo Ex. P.W. 5/A. P.W. 5/A is an official from HPSEB and he produced record. P.W. 7 is another official and has produced the appointment letters and posting orders Ex. P-1 to Ex. P-3 of the Respondents. P.W. 8 is the doctor, who has proved case summary Ex. P.W. 8/A of injured Raj Kumar. He has stated that Raj Kumar has sustained electric burn injuries.

5. P.W. 6 Harminder Singh, Junior Engineer has stated that Respondents are serving in his Department as T-mate and Line man. It is the duty of Line man to check the line while T-mate helps the Lineman in doing so. He has proved the abstract of attendance register of Respondents Ex. P.W. 6/A and Ex. P.W. 6/B. He has stated that Respondents were posted as Lineman and T-mate in December, 1999. He has not produced duty register but explained that no such duty register is maintained in the office.

6. P.W. 9 is the Investigating Officer. He has stated that on receiving complaint Ex. P.W. 1/A, he went to IGMC, Shimla and recorded the statement of injured u/s 154 Code of Criminal Procedure Ex. P.W. 9/A and thereafter registered FIR. P.W. 10 Ashok Kumar has partly investigated the case and P.W. 11 Dr. Digvijay Singh has medically examined the injured at Civil Hospital, Nichar and issued MLC Ex. P.W. 11/A.

7. It has been proved on record that injured Raj Kumar suffered burn injuries due to electrocution. It has come on record that the stay wire of the pole was not having isolator. In other words, somehow the live conductor came in contact with the metal portion of the pole and, therefore, the current was flowing in the stay wire. There is nothing on record how live conductor came in contact with the metal part of the electric pole which in turn passed the current in the stay wire. The prosecution case is completely silent on this aspect.

8. It has also been proved on record that Respondents were working as T-mate and Line man at the relevant time. The line in question was high tension line. There is nothing on record what is the procedure for checking and maintaining such high tension line which invariably covers long distance. P.W. 6 Harminder Singh, Junior Engineer has stated that it was the duty of the Line man to check the line while T-mate helps the Line man in doing so. But on what basis P.W. 6 has given this statement that has not been placed on record.

9. The learned Chief Judicial Magistrate has taken a possible view from the evidence on record. It is settled law that in appeal against acquittal, merely other view is possible is no ground for setting aside the acquittal. There is no merit in the appeal, hence the appeal is dismissed. The bail bonds of the Respondents are discharged.