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STATE OF RAJASTHAN

v.

CHITTARMAL

JUNE 21, 2007

B

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

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*Penal Code, 1860—s.304A—Protection under—When available—Held: For protection under s.304A there should be neither intention nor knowledge to cause death—When any of these two elements is present, s.304A has no application.*

D

*Penal Code, 1860—ss.304A and 302—Death due to electrocution on coming into contact with naked live electric wire—Electric wire allegedly fixed by Respondent with the intention to kill deceased—Plea of accused in defence that he put the wire to prevent wild animals from going into his field—On facts, held: Defence version was probable—Prosecution not able to establish accusation under s.302—High Court right in convicting accused under s.304A.*

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The father as well as brother of PW13 died due to electrocution after coming into contact with naked live electricity wire. The electric wire was allegedly fixed by Respondent with the intention to kill the father of PW13.

Trial Court convicted Respondent under Section 302 IPC. High Court, however, altered conviction to Section 304A.

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In appeal to this Court, it is contended that Respondent is liable to be convicted under Section 302 and not under Section 304A as held by the High Court.

Dismissing the appeal, the Court

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**HELD:** 1.1. S.304A, IPC relates to death caused by negligence. The Section 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

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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. [Para 9] [1155-F-H; 1156-A]

1.2. 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. [Para 10] [1156-A-B]

2. The defence of Respondent was that to prevent wild animals from going into his field he had put the wire. The probability of the defence version is borne out from several factors; firstly two poles were placed to which wire was fastened. In fact this aspect has been clearly taken note of by the Trial Court but it was concluded that merely because the wooden poles were there that did not establish the defence plea that the same was intended to keep away wild animals. High Court found that the prosecution itself accepted that two sticks were fixed. There was also seizure of the wooden sticks which aspect was also accepted by the trial court. In view of the analysis made by the High Court, the inevitable conclusion is that prosecution has not been able to establish the accusation under Section 302 IPC and the High Court rightly convicted the accused under Section 304A IPC.

[Paras 11, 12 and 13] [1156-B-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 477 of 2001.

From the Judgment and Order dated 29.09.1999 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Criminal Appeal No. 786 of 1998.

Naveen Singh (for Aruneshwar Gupta) for the Appellant.

K.K. Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment

A rendered by a Division Bench of the Rajasthan High Court. Jaipur Bench altering conviction of the respondent from one punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') to Section 304A IPC. Two years rigorous imprisonment and a fine of Rs.5000/- with default stipulation was awarded.

B 2. Background facts in a nutshell are as follows:

C Shri Girdhari (PW-13) submitted a written report to S.H.O., P.S. Thoi, District Sikar, to the effect that in the intervening night of 13/14th March, 1997 his father Ram Kumar (hereinafter referred to as 'deceased') went to his field for irrigation. Accused Chhittar due to enmity had fixed naked live electricity wire near the fencing with the intention to kill Ram Kumar. When in the night Ram Kumar came in contact with electric wire he died due to electrocution. At about 3.15 A.M. complainants' younger brother Murlidhar went to give tea to his father, and he also died due to electrocution. After some time uncle D of complainant Sua Lal noticed the dead bodies of Ram Kumar and Murlidhar lying in the field, he raised alarm. Complainant and other neighbour reached there. At that time Chhittar removed the wire from the electricity pole and tried to remove the wire from the place of occurrence, but he was prevented from doing so by the persons assembled there. On the basis of this report a case under Section 302 IPC was registered against the accused (FIR 29/97). The E Investigating Officer immediately proceeded to the place of occurrence, prepared panchnama, site plan, and the wire was seized. Post mortem was conducted by the Medical Officer. According to the post mortem report the cause of death of Ram Kumar and Murlidhar was due to electrocution. The accused was arrested on the same day. After completing investigation a charge sheet was filed in the Court of Judicial Magistrate, Neem Ka Thana, F for the offence punishable under Section 302 IPC. Learned Magistrate committed the case for trial to the Court of Sessions. The case was tried by the learned Additional Sessions Judge, Neem Ka Thana.

G 3. The learned Additional Sessions Judge after hearing the arguments framed the charge for the offence punishable under Section 302 IPC against the accused, who denied the charge and claimed to be tried.

H 4. In this case the prosecution examined 15 witnesses and referred to several documents. Statement of accused under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr. P.C.') was recorded. He stated that he has been falsely implicated in this case. He was not cultivating the field.

Prosecution witnesses relating to the incident are closely related to the complainant. He has also examined Phool Chand (DW-1) in his defence.

5. On the basis of evidence produced before the learned Additional Sessions Judge, he held that due to enmity with the intention to kill Ram Kumar and his son Murlidhar, accused Chhittar fixed naked live wire of electricity on the drain for supplying water in the field in between the fields of Ram Kumar and Chhittar with the result that in the night when Ram Kumar went to his field he died due to electric current. When Murlidhar went there to give tea to his father he also came in contact with the electric wire and died on the spot. On this finding he convicted the accused under Section 302 IPC and sentenced as mentioned above.

6. The High Court found that the proper conviction would be under Section 304A IPC and not Section 302 IPC as was held by the trial court.

7. In support of the appeal, learned counsel for the appellant submitted that in this case with full knowledge that death would be the resultant, accused had fixed electric wires in the fence and two persons lost their lives after coming in contact with the live wire. The conduct of the accused who was trying to take out the wire showed both his intention and knowledge. Therefore the trial court had rightly convicted the respondent under Section 302 IPC.

8. Learned counsel for the respondent accused supported judgment of the High Court.

9. 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

A graver and more serious charge of culpable homicide.

10. 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.

B 11. It is to be noted that the defence of the accused was that to prevent wild animals from going into his field he had put the wire. It is to be noted that the case rested on circumstantial evidence and the circumstances highlighted were as follows:

C “(1). enmity with the deceased; (2) presence of accused when Sua Lal raised alarm after seeing the dead body of Ram Kumar and Murlidhar; (3) accused removed the electric wire from the electric pole in presence of Sua Lal; (4) accused tried to remove the wire from the place of occurrence but he was prevented to do so by the neighbours who assembled by that time and (5) extra judicial confession.”

D 12. The High Court found that the so called judicial confession was not established while the other aspects were clearly established. The probability of the defence version is borne out from several factors; firstly two poles were placed to which wire was fastened. In fact this aspect has been clearly taken note of by the trial court but it was concluded that merely because the wooden poles were there that did not establish the defence plea that the same was intended to keep away wild animals. High Court found that the prosecution itself accepted that two sticks were fixed. There was also seizure of the wooden sticks which aspect was also accepted by the trial court.

E F 13. In view of the analysis made by the High Court, the inevitable conclusion is that prosecution has not been able to establish the accusation under Section 302 IPC and the High Court rightly convicted the accused under Section 304A IPC.

14. The appeal is accordingly dismissed.

B.B.B.

Appeal dismissed.