

(2015) 02 MP CK 0165

Madhya Pradesh High Court

Case No: Criminal Revision No. 927 of 2014

Delan Singh

APPELLANT

Vs

State of Madhya
Pradesh

RESPONDENT

Date of Decision: Feb. 3, 2015

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 397, 401
- Penal Code, 1860 (IPC) - Section 304, 304(II), 304-A

Citation: (2015) 02 MP CK 0165

Hon'ble Judges: C.V. Sirpurkar, J

Bench: Single Bench

Advocate: Pramod Singh Tomar, Learned Counsel, for the Appellant; Amit Pandey, Learned Panel Lawyer, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.V. Sirpurkar, J

This revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 is directed against the order dated 28.4.2014 passed by the Court of 6th Additional Sessions Judge, Sagar in Sessions Trial No. 3/2014, whereby learned Additional Sessions Judge had framed a charge against the revision petitioner/accused Delan Singh under section 304 (part II) of the Indian Penal Code.

2. As per the prosecution story, at around 11:00 p.m. on 7.9.2013 deceased Brajesh, who was a 14 year old boy, left home telling that he is going in the village to play. Next morning at around 8:00 a.m, his electrocuted dead body was discovered from the field of accused Delan Singh. During investigation, it came to light that in order to protect his crop of maize, accused/ applicant Delan Singh had laid GI wires in his field and had released

stolen electric current in those wires so that any human being or animal entering the field would come in contact therewith and would suffer electric shock. After preliminary inquiry, first information report under section 304-A of the I.P.C. was lodged. Subsequently, a charge sheet was filed under the aforesaid provision.

However, learned trial Court was of the view that in the facts and circumstances of the case, a charge for the offence punishable under section 304(part II) and not merely under 304-A of the I.P.C. was made out. Consequently, by impugned order, a charge under section 304(part II) of the I.P.C was framed.

The order directing framing of the charge as aforesaid, has been assailed on behalf of the revision petitioner on the grounds that it is borne out in the statements of prosecution witnesses, that the wires were negligently laid in the field and the element of intention was totally missing from the alleged act; therefore, at best, a charge under section 304-A was made out. Hence, learned trial Court grievously erred in framing a charge under section 304(part II) of the Indian Penal Code. On the other hand, learned Panel Lawyer for the respondent/State has supported the order framing charge under section 304(part II) of the I.P.C.

3. After considering the rival contentions, this Court is of the view that this revision petition must fail for the reasons hereinafter stated.

Section 304 of the I.P.C. reads as follows:

"304. Punishment for culpable homicide not amounting to murder-Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

4. A perusal of the statements of witnesses Gajraj, Budhe, Surat, Munna and Govindi recorded under sections 161 of the Cr.P.C. reveals that the revision petitioner/accused Delan Singh had deliberately laid GI wires in his field in order to protect his maize crop which was standing in the field. Deceased Brajesh was electrocuted through his foot; therefore, it may safely be assumed that the wires had been laid at a very low height. Thereafter, electric current stolen from the DP, was released in the GI wires. The idea was that any person or animal intending to harm the crop would come in contact with the GI wires and would suffer electric shock. Thus, even if there was no intention on the part of the accused to actually kill any one, a man of common prudence may be imputed with the knowledge that someone is likely to come in contact with the aforesaid wires, suffer

electric shock and die. Hence, it is clear that death of deceased Brajesh was not result of any negligence on the part of accused/revision petitioner but was result of a deliberate act coupled with knowledge that such act is likely to cause death; though, without any actual intention to cause death.

5. In this regard, learned counsel for the revision petitioner has invited attention of the Court to the judgment rendered by the Supreme Court in the case of [Naresh Giri Vs. State of M.P.](#), (2008) ACJ 300 : AIR 2007 SC 7104 : (2008) CLT 702 : (2007) 12 JT 433 : (2007) 13 SCALE 7 : (2007) 11 SCR 987 . However, the principle laid down in this judgment does not advance the cause of the revision petitioner. It has been held by the Supreme Court that section 304-A of the I.P.C. applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. In the case at hand, though admittedly, there was no intention to cause death but a knowledge of likelihood of death is prima facie imputable to the accused.

6. In aforesaid circumstances, learned trial Court committed no error in framing a charge under section 304(II) of the I.P.C. The impugned order does not suffer from any infirmity, irregularity or impropriety. Thus, interference at the stage of framing of charge is unwarranted.

7. Consequently, this revision petition is dismissed with the observation that the learned trial Court shall decide the matter on its own merit without being influenced by the observation made herein.