Supreme Court of India

CHIEF JUSTICE OF INDIA N.V. RAMANA JUSTICE KRISHNA MURARI JUSTICE HIMA KOHLI

Nanjundappa v. The State of Karnataka

CRIMINAL APPEAL NO. 900 OF 2017

17th May 2022

Criminal Trial – Circumstantial evidence – No eye witness – In a case of Circumstantial evidence there is a risk of jumping to conclusions in haste – While evaluating such evidence the jury should bear in mind that inference of guilt should be the only reasonable inference from the facts – For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then establish direct nexus between negligence of the accused and the death of the victim – Perusal of the record reveals that out of various witnesses arrayed by the prosecution, there are no eye witnesses – Any evidence brought on record is merely circumstantial in nature – We are constrained to repeat our observation that it sounds completely preposterous that a telephone wire carried 11KV current without melting on contact and when such current passed through the Television set, it did not blast and melt the wiring of the entire house – It is even more unbelievable that Appellant no. 2 came in contact with the same voltage and managed to get away with a few abrasions – The Appellants therefore are entitled to be given the benefit of doubt; more so, when there is no report of a technical expert to corroborate the prosecution story – Conviction and sentence set aside – IPC, s. 304A read with S. 34 IPC.

Petitioner Counsel: RAJESH MAHALE

Respondent Counsel: V. N. RAGHUPATHY

Act Name: Indian Penal Code, 1860

HeadNote : Indian Penal Code, 1860 – S.34, S.304A

Section :

Section 34 Indian Penal Code, 1860 Section 304A Indian Penal Code, 1860

Cases Cited :

Para 9: Syad Akbar Vs. State of Karnataka, MANU/SC/0275/1979; 1979CriLJ1374

Para 10: S.L.Goswami Vs. State of M.P., 1972 CRI.L.J.511(SC)

JUDGEMENT

KRISHNA MURARI, J.

1. This Appeal challenges the judgment and Order dated 07.02.2017 passed by the High Court of Karnataka at Bengaluru in Criminal Revision Petition No. 1048/2010 dismissing the Petition filed by the appellants herein. The High Court confirmed the Judgment and Order of the Trial Court and the First Appellate Court convicting the Appellants under Section 304(A) read with Section 34 of the Indian Penal Code (for short 'IPC') and sentencing them to undergo Simple Imprisonment for 1 year and 3 months and penalty of Rs. 3000/ each with default stipulation of Simple Imprisonment for 3 months.

2. Facts shorn of unnecessary details as unfolded by prosecution are as under:

On 21.11.2003 at around 1.00p.m. Sri Uday Shankar S/o PW2 was watching TV in his house at Molakalmuru Town, New Police Quarter No. 13, when there was a sudden sound in the TV. Noticing the sound, the deceased got up to separate the dish wire, the TV connection wire and the telephone wire, which were entwined together. At this point, he felt an electric shock and his right hand was burnt and as a result of this shock he succumbed to death. Upon enquiry, during the course of investigation, it was found that Appellant No. 2, who was a daily wage worker working under the supervision of Appellant no. 1, an employee in the telephone department, had, while working on the DP Pole, pulled the telephone wire. The telephone wire got detached and fell on the 11 KV Power line and electricity passed into the telephone wire. At this time, there was a sound in the TV at PW2's house and as the deceased went to separate the telephone wire and cable wire, there was a short circuit and thereby, the right hand of the deceased was burnt and he died because of electrocution. It is further alleged that the said incident took place because of the negligent act on the part of Appellant/accused No. 1 and Appellant/accused No. 2.

3. The conviction of the Appellants/Accused rests on circumstantial evidence and the circumstances highlighted were as follows:

(1) PW1/doctor's report suggesting that death was due to instantaneous cardiac arrest and paralysis of the brain stem secondary to shock.

(2) Deposition of PW9,10,16, who were Police Staff residing in the Delhi police quarters, stating that they also touched the telephones in their respective houses and felt the presence of electricity and immediately threw away the telephone instruments.

(3) Evidence of PW1/doctor, who stated that on the same day he had examined Appellant/Accused no. 2 for injuries as he had sustained a fall from the pole and an out-patient slip was also issued to him.

(4) Evidence of the Prosecution witnesses that the deceased upon hearing noise from the television set first switched off the main electricity switch and then tried to separate the wires. However, there was still current in the wires.

(5) Evidence of PW15, who was a higher officer in the Department of Telephone stating that Appellant/accused no.1 and Appellant/ accused no. 2 were on duty and working on that

day.

4. The defence taken by the Appellants/accused is that on the day of the incident, they had not attended any telephone wire repair at the place of the incident and death of the deceased was not due to their carelessness and negligence. While the Appellants/accused have not denied the postmortem report which attributes the death to instantaneous cardiac arrest and paralysis of the brain stem secondary to shock, the source of the shock is implied to be the television set and not the Telephone connection.

5. After giving our careful consideration to the respective submissions made by the learned Counsel for the parties and considering the facts and circumstances of the case and evidences on record even if we take that the Appellants/accused were in fact working on the DP pole on the day of the incident, we find it difficult to believe that with the alleged 11KV current running through Telephone wire, the wires did not melt; rather with the alleged volts of current passing through the telephone instruments PW9,10,16 were able to throw the telephone instruments away upon contact and lived to tell the tale unharmed. Even assuming that the deceased and the Prosecution witnesses who received the shock were wearing slippers at the time of contact causing resistance in the current, 11KV is still too strong and any contact with such a high voltage current in all probability should have left any person who came in contact dead and his/her body charred. For reference standard domestic voltage in India is only around 220V. Hitherto, the evidence by PW9,10 & 16 is hearsay and circumstantial and not worthy of any credence.

6. Now referring to PW1Doctor’s evidence; he deposed that Appellant no. 2 had visited him on the same day of the incident and had suffered abrasion injuries on his four fingers of both hands i.e., excluding the thumbs and abrasions on both thighs. The record shows that the deceased had also suffered abrasion injury along with burn injuries. PW1 deposed in Examinationinchief in clear words that “the blood vessels of right thumb finger and ring finger were burnt and wounds were shrinking.” In light of these facts the lower court came to the conclusion that Appellant no. 2 also suffered abrasion injuries due to electric shock just as the deceased. This conclusion however does not inspire confidence in our eyes bearing in mind that if Appellant no.2 had infact suffered an electric shock coming in contact with 11KV high tension line and sustained a fall from the pole he would have suffered burn injuries too such as the deceased and such a shock along with the fall could potentially be fatal. However, the record only shows abrasions on 4 fingers and thighs.

7. We also find difficult to see reason in the submission that telephone wires were able to carry current from an 11KV high tension line and did not immediately melt. It is even more difficult to assimilate that such current when passed through the television, did not blast the television set and set the entire wiring of the house on fire. Be that as it may, the allegations against the Appellants are highly technical in nature and we find that no report or even inspection was conducted by a technical expert to assess the veracity of the averments made by the complainants to suggest that it was due to the alleged acts of the Appellants that the incident took place.

8. Even the evidence of PW15 is circumstantial in nature, who stated that as per the job

sheet, the Appellants were working at the Police quarters; however, there is no eye witness to say conclusively that the Appellants were infact executing the work at the place alleged.

9. Here it would be useful to advert to the dictum in the case of Syad Akbar Vs. State of Karnataka, MANU/SC/0275/1979; 1979CriLJ1374 in which this Court proceeded on the basis that doctrine of res ipsa loquitur stricto sensu would not apply to a criminal case as its applicability in an action for injury by negligence is well known. In Syad Akbar (supra), this Court opined:

"29. Such simplified and pragmatic application of the notion of res ipsa loquitur, as a part of the general mode of inferring a fact in issue from another circumstantial fact is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances should make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt."

10. In case of circumstantial evidence, there is a risk of jumping to conclusions in haste. While evaluating such evidence the jury should bear in mind that inference of guilt should be the only reasonable inference from the facts. In the present case however, the conviction of the accused persons seems wholly unjustified against the weight of the evidence adduced. As far as the onus of proving the ingredients of an offence is concerned, in the judgment titled as "S.L.Goswami Vs. State of M.P., 1972 CRI.L.J.511(SC)" this Court held:

"5 ..... In our view, the onus of proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is palpably false that burden does not become any less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case, which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution....."

11. Bearing in mind the above principles which have been laid down in the decisions of this Court, we are of the view that the Courts below were not justified in convicting the Appellants of negligence under Section 304A read with Section 34 IPC.

12. For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then establish direct nexus between negligence of the accused and the death of the

victim. Perusal of the record reveals that out of various witnesses arrayed by the prosecution, there are no eye witnesses. Any evidence brought on record is merely circumstantial in nature. We are constrained to repeat our observation that it sounds completely preposterous that a telephone wire carried 11KV current without melting on contact and when such current passed through the Television set, it did not blast and melt the wiring of the entire house. It is even more unbelievable that Appellant no. 2 came in contact with the same voltage and managed to get away with a few abrasions. The Appellants therefore are entitled to be given the benefit of doubt; more so, when there is no report of a technical expert to corroborate the prosecution story.

13. Accordingly, impugned judgment of conviction and sentence of the appellants is set aside. The Appellants are on bail. They shall be discharged of their bail bonds.

14. As a consequence, the appeal stands allowed.