

Sanganagouda vs the State of Karnataka,

Sanganagouda vs the State of Karnataka,

SooperKanoon Citation : sooperkanoon.com/1815695

Court : Karnataka Dharwad

Decided On : Feb-29-2024

Judge : Anil B Katti

Appeal No. : CRL.RP/100138/2016

Appellant : Sanganagouda

Respondent : The State of Karnataka,

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 29TH DAY OF FEBRUARY, 2024 BEFORE THE HON'BLE MR JUSTICE ANIL B KATTI CRIMINAL REVISION PETITION NO. 100138 OF 2016 (397-) BETWEEN:

1. SANGANAGOUDA VIRUPAXAGOUDA DODDAGOUDRA, AGE: 49 YEARS, OCC: AGRICULTURE, R/O: HIREHULLAL, TQ: HANAGAL. PETITIONER (BY SRI. MAHESH WODEYAR, ADVOCATE) AND:

1. THE STATE OF KARNATAKA,

THROUGH ADUR POLICE STATION, R/BY S.P.P. SAROJA HIGH COURT OF KARNATKA, HANGARAKI DHARWAD BENCH. Digitally signed by SAROJA HANGARAKI Location: HIGH COURT OF RESPONDENT

KARNATAKA,DHARWAD BENCH Date: 2024.03.06 10:37:05 +0530 (BY SRI. PRAVEENA Y DEVAREDDIYAVAR, HCGP) THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W SEC.401 OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND

ORDER OF CONVICTION DATED 11.05.2016 PASSED BY THE I ADDL.

DIST. AND SESSIONS JUDGE, HAVERI IN CRL.A.15/2012 AND ALSO THE JUDGMENT AND ORDER OF CONVICTION DATED 25.02.2012 PASSED BY THE CIVIL JUDGE AND JMFC, HANGAL IN C.C.151/2010 AND CONSEQUENTLY ACQUIT THE PETITIONER/ACCUSED FOR THE O/P/U/S.304(A) OF IPC. -2- THIS CRIMINAL REVISION PETITION, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Appellant/accused feeling aggrieved by the judgment

of First Appellate Court on the file of I Additional District and Sessions Judge, Haveri in Criminal Appeal No.15/2012 dated 11.05.2016 in confirming the judgment of trial Court on the file of Civil Judge and JMFC, Hangal in C.C.No.151/2010 dated 25.02.2012 for the offence under Section 304(A) of IPC preferred this appeal.

2. Parties to the revision petition are referred with their ranks as assigned in the trial Court for the sake of convenience.

3. Heard the arguments of both sides.

4. After hearing the arguments of both sides and on perusal of trial Court records, so also the impugned

judgment under appeal, the following points arise for

consideration: -3- i. Whether the impugned judgment under revision passed by the First Appellate Court in confirming the judgment of trial Court for the offence under Section 304(A) of IPC is perverse, capricious and legally not sustainable? ii. Whether interference of this Court is required?

5. On careful perusal of oral and documentary

evidence placed on record, it would go to show that on 27.07.2010 at about 8.00 a.m. the son of complainant Lingarajgouda aged about 17 years had been to Varada River with two bullock calves to wash them. However, one of the bullock calves did not return home, the complainant grew suspicion and went in search of his son. On going near Varada River, he found his son had died due to electrocution near TC beside Hartihalla. It is further case

of prosecution that Sanganagouda Doddagoudra had installed a motor pump-set and obtained electricity supply to it from TC. However, he could not properly install the -4-

poles and electric wires in a proper manner and as a result of which the JE wire had fell down on the ground to which the son of complainant Lingarajgouda came in contact and died due to electrocution. It is further alleged that complainant with the help of villagers, Mahadevappa and Shivalingayya Hiremath disconnected electricity supply to the TC and found that his son died due to electric burn injuries over left knee and left forearm. The prosecution further alleges that the son of complainant Lingarajgouda

died due to electrocution on account of culpable negligence of the owner of land Sanganagouda Doddagoudra who did not install the poles and electric wires properly as a result of which JE wire had fell down on the ground leading to the death of son of complainant on coming into contact with JE wire fell on the ground.

6. The prosecution to prove the charges levelled

against the accused, relied on the oral testimony of PW.1 to PW.11 and documents Ex.P.1 to Ex.P.8, so also got identified MO.1 and MO.2. The trial Court after hearing the -5- arguments and on appreciation of oral and documentary

evidence, convicted the accused for the offence under

Section 304(A) of IPC and imposed sentence as per order

of sentence.

7. Accused has challenged the said judgment of

conviction and order of sentence before the First Appellate Court on the file of I Additional District and Sessions Judge, Haveri in Criminal Appeal No.15/2012. The First Appellate Court after re-appreciation of oral and documentary evidence, by judgment dated 11.05.2016, dismissed the appeal and confirmed the judgment of conviction and order of sentence passed by the trial Court.

8. The concurrent findings of both the Courts below have been assailed by the accused in the present

revision petition contending that there was no any evidence to hold that the accused had unauthorizedly taken electricity to the borewell. The material witness PW.8 - Chandrashekar Maribasappa Kadakol and his admissions in the cross-examination would demolish the -6-

case of prosecution on the alleged negligence of accused in getting electricity connections to the borewell. The evidence of PW.1 - Naganagoudra and PW.2 - Meenakshi who are the parents of deceased Lingarajgouda also cannot be relied to prove the alleged negligence of the accused having taken unauthorized electricity connection from the TC to the borewell installed by the accused. The approach and appreciation of oral and documentary evidence by both the Courts below are contrary to law and evidence on record and the same cannot be legally sustained. Therefore, prayed for allowing the revision petition and to set aside the judgment of conviction and

order of sentence of both the Courts below.

9. Learned counsel for the revision petitioner has

vehemently argued that allegation of prosecution that the accused had unauthorizedly taken electricity connection to his borewell has not been established by the prosecution out of the evidence placed on record. The evidence of PW.1 - Naganagoudra, PW.2 - Meenakshi, PW.6 - -7- Mahadevappa and PW.8 - Chandrashekar Kadakol has not been properly appreciated by both the Courts below with reference to their admission in their cross-examination. The observations and findings recorded by both the Courts below are contrary to law and evidence on record and same needs to be interfered by this Court.

10. Per contra, learned High Court Government

Pleader has argued that the fact of son of complainant Lingarajgouda died due to electrocution by coming into contact with JE wire fell on the ground in the land belongs to the accused has been established by the prosecution out of the evidence placed on record. The accused had unauthorizedly taken electricity connection from the TC to the borewell and did not exercise due diligence in installing the poles to connect the electric wires in a proper manner and it is on account of such negligence, the son of complainant came in contact with the JE wire fell on the ground and died due to electrocution. The Courts below have rightly appreciated the evidence on record and

-8- justified in holding the accused being guilty for the offence under Section 304(A) of IPC and in imposing the sentence. The said findings recorded by both the Courts below are based on material evidence on record and the same does not call for any interference by this Court.

11. The case of prosecution entirely rests on

circumstantial evidence and it is the duty of the prosecution to prove beyond all reasonable doubt that all the chain of circumstances unerringly point out finger against the accused that it is on account of negligence of accused in unauthorizedly getting electricity supply to the borewell, the son of complainant died due to electrocution.

12. PW.1 - Naganagoudra has deposed to the effect

that his son Lingarajgouda had left the house with two bullock calves to Varada River to wash them. It is only one bullock calves returned to the home, the complainant grew suspicion and went in search of his son. The complainant on coming near Varada River found the dead body of his son near TC who died due to electrocution. He further

-9- deposed to the effect that the JE wire fell down on the ground and his son came in contract with the JE wire fell on the ground due to which suffered burn injuries over his hands and thigh and died due to electrocution.

13. PW.2 - Meenakshi wife of complainant - PW.1

deposed to the effect that her son left the home with two bullock calves to wash them to Varada River. It is only one bullock calves returned to the home and her husband went in search of Lingarajgouda. She came to know about the death of her son Lingarajgouda due to electrocution from her husband PW.1 Naganagoudra. On visiting to the spot, she found that her son Lingarajgouda sustained burn injuries over hands and legs due to coming in contact with JE wire fell on the ground and died due to electrocution. The evidence of PW.6 - Mahadevappa is also on same line as deposed by PW.1 - Naganagoudra.

14. PW.8 - Chandrashekar Kadakol has deposed to the effect that on 28.07.2010 he received information from Assistant Executive Engineer, Haveri that a person - 10 - died due to electrocution. He went to the spot on 31.07.2010 and found that the owner of land

Sanganagouda Doddagoudra had taken electricity connection to his pump-set and the current wires were taken by the police. He went to the police station and on examination of the seized wires MO.1 and MO.2, found that the cover of service wire was deteriorated and came in contact with messenger wire due to which the son of complainant Lingarajgouda who came in contact with such wire died due to electrocution. He further deposes to the

effect that he came to know that owner of land Sanganagouda Doddagoudra had taken unauthorized electricity connection to his borewell and accordingly given

report Ex.P.7.

15. On appreciation of aforementioned evidence of

PW.1, PW.2, PW.6 and PW.8, it would go to show that Ex.P.7 report of PW.8 - Chandrashekar Kadakol is the basis for the allegation that it is on account of negligence of accused in taking unauthorized electricity connection to - 11 -

pump-set and allowing the JE wire to fell on the ground, the son of complainant Lingarajgouda who came in contact with such fallen JE wire died due to electrocution. The report of PW.8 - Chandrashekar Kadakol Ex.P.7 dated 27.09.2010 would go to show that the accused being the owner of the land abutting to Varada River has installed pump-set to lift water from Varada River by using

messenger wire through service wire. The son of complainant Lingarajgouda who went to caught hold one bullock calves, came in contact with messenger wire and died due to electrocution. It is also further reported that the accused who was the owner of land had taken unauthorized connection from the TC to lift water from

pump-set motor. PW.8 has admitted in the cross- examination the distance between installation of pump-set and the land of accused is about 100 meters and he cannot exactly state the place of incident. He further admits that if authorized electricity connection was taken from transformer, the maintenance of wire has to be looked after by electricity supply company. He further

- 12 - admits that if anybody takes unauthorized connection of electricity then it amounts to theft of electricity and he did not complain to the electricity board for accused having taken unauthorized connection to the pump-set. He further categorically admits that since the accused did not take unauthorized electricity connection, the electricity company has not taken any action against the accused.

16. PW.1 claims in his cross-examination that

accused had installed small poles for connecting wires to the electricity connection from TC and the same were broken and the wire was fallen on the ground due to

improper installation of poles for connecting wire. Due to

such negligence his son Lingarajgouda died due to electrocution. This material allegation of negligence has not been supported by the evidence of PW.2 - Meenakshi and PW.8 - Chandrashekar Kadakol. So also, the report Ex.P.7 is silent to that effect. PW.1 has admitted in his cross-examination that maintenance of MO.1 and MO.2 is being looked after by the electricity department and it is

- 13 -

their responsibility to maintain the electricity wire. PW.6 - Mahadevappa has admitted in his cross-examination that the place where the TC was installed and Lingarajgouda fell on the ground is not the property belongs to the accused. He further admits that the accused has not installed pump-sets for lifting the water. If the above referred evidence of material witnesses, PW.1, PW.2, PW.6 and PW.8 are carefully perused and appreciated, then it would go to show that the prosecution has proved the factum of death of son of complainant Lingarajgouda due

to electrocution and postmortem report Ex.P.4 also supports the fact that death of deceased Lingarajgouda is due to electrocution. It is true that the accused during cross-examination of the above referred witnesses has taken inconsistent stand, but that itself does not mean that the prosecution has been absolved from its duty to prove the alleged culpable rashness or negligence in proving the fact that the death of son of complainant Lingarajgouda due to electrocution.

- 14 -

17. Learned counsel for the revision petitioner in

support of his contention that negligent and rash act causing death of Lingarajgouda, the offence under Section 304(A) of IPC must be established by the prosecution, relied on the judgment of the Honble Apex Court in Ambalal D Bhatt vs. The State of Gujarat reported in

(1972) 3 SCC 525, wherein it has been observed and

held as under:

In a prosecution for an offence under Section 304-A of IPC, the court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and efficient cause of the death without intervention of others negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an offence under Section 304-A, IPC. The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua non. The court has to determine whether the act of the accused is the causa causans or has there been a cause intervening which has broken the chain of causation so as to make the act - 15 -

of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be ought not to allow the mind boggle while appreciating the evidence. In view of the principles enunciated in the aforementioned judgment of the Honble Apex Court, it is evident that the prosecution has to establish the proximate cause for the death due to negligence of accused and without such negligence the death of son of complainant would not have occurred.

18. Learned counsel for the revision petitioner also

relied on another latest judgment of the Honble Apex Court in Nanjundappa and Another vs. State of Karnataka reported in 2022 SCC Online SC 628, wherein it has been observed and held as under: For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then establish direct nexus between negligence of the - 16 -

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.

The Honble Apex Court in this judgment has categorically held that the prosecution has to establish direct nexus between the negligence of the accused and the death of the victim, the mere death of victim due to electrocution is not sufficient evidence to prove the negligence of accused. - 17 -

19. In the present case, the prosecution has failed

to prove the alleged negligence of accused in taking unauthorized connection from the TC to the pump-set of accused. Secondly, small poles were installed without proper foundation connecting the wire, due to which the JE wire was disconnected from the pole and the same was lying on the ground. Thirdly, the wire was negligently connected to lift water from Varada River through pump- set. The mere inconsistency of defence taken by the accused will not absolve the prosecution from proving the fact alleged amounting to negligence leading to the death of Lingarajgouda, son of complainant due to electrocution. In view of the aforementioned admissions of PW.1, PW.6 and PW.8 during the course of their cross-examination, the prosecution has failed to substantiate the allegations made against the accused that the death of son of complainant Lingarajgouda is due to electrocution on account of aforementioned negligence of accused. The Courts below have proceeded on the premises of death of Lingarajgouda, son of complainant due to electrocution

- 18 - and assumed the alleged negligence of accused without

properly appreciating the evidence on record. The evidence placed on record by the prosecution is materially lacking in pinpointing the alleged culpable negligence of the accused leading to the death of son of complainant Lingarajgouda due to electrocution. There is no concrete evidence to establish the direct nexus between the

negligence of accused and the death of son of complainant. Therefore, the Courts below have committed an error in holding the accused guilty for the offence under Section 304(A) of IPC and the interference of this Court is required. Consequently, proceed to pass the following:

ORDER

Revision petition filed by the revision petitioner is hereby allowed. The judgment of First Appellate Court on the file of I Additional District and Sessions Judge, Haveri in Criminal Appeal No.15/2012 dated 11.05.2016 in confirming the - 19 -

judgment of trial Court on the file of Civil Judge and JMFC,

Hangal in C.C.No.151/2010 dated 25.02.2012 is hereby set aside. The accused is acquitted for the offence punishable under Section 304(A) of IPC. The bail bond of accused and that of his surety shall stand discharged. Registry is directed to transmit the records to the trial Court with a copy of this judgment. Sd/- JUDGE SH
List No.: 1 Sl No.: 41

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com