

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 137 of 2019

Under section 287/304 of I.P.C
(Arising out of G. R Case No. 3363 of 2018)

State of Assam

-Vs-

1. Dibyajyoti Chakraborty

...Accused Person

**Present: Smti I. Barman,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. Munin Ch. Baruah,P.P.

For the accused : AK Mahanta,
Advocate.

Date of Argument : **19-02-2021.**

Date of Judgment : **20-02-2021.**

JUDGMENT

1. The prosecution case against the accused person as projected in the FIR , in brief is that on 31-08-2018, at around 2.15 p.m., while the informant's nephew Jit Ghosh along with his friend Ashok Bhuyan were working at Phulbari TE office campus, at that time accused Dibyajyoti Chakraborty and other three persons, the workers of Green R.G. Company were also working with the welding machine of Phulbari TE. At that time, the accused and other three persons asked Jit Ghosh and Ashok Bhuyan to drag the welding machine, which was connected with electricity. As soon as they hold the machine, Jit Ghosh got electrocuted

and died at the spot while Ashok Bhuyan sustained severe injury by electrocution.

2. On receipt of the ejahar from the informant Sekhar Ghosh(PW1), the O/C Chariduar PS registered the case being Chariduar PS Case No. 250/18 under Section 387/304/326/337/34 of IPC and launched investigation of the case. The Investigating Officer recorded the statements of the witnesses, arrested the accused and on completion of investigation having found materials submitted charge-sheet against the accused Dibyajyoti Chakraborty u/s 287/304/34 of the IPC.

3. On appearance the accused person, Learned CJM, Sonitpur, Tezpur, after furnishing copies of the documents as required under section 207 Cr.PC, committed the case to the court of Session, being the offence u/s 304 IPC exclusively triable by the court of Session.

4. Accordingly, on appearance of the accused person before this Court, after hearing both side, charge u/s 287/304 of the IPC was framed against the accused Dibyajyoti Chakraborty and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.

5. To substantiate the case, prosecution examined as many as five witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations charged against him. He pleading innocence stated that at the time of incident, he was working in a water plant at Phulbari TE as Service Engineer. Two persons had been endorsed from Phulbari TE to work in the water plant. After the work had been completed, he endorsed them to work in servicing of another water plant. There was welding machine which was provided to them by the Phulbari TE for the said work. On the day of incident at around 2 PM as some tools were required, he went to the factory. At that time on being informed, he rushed to the place and saw Jit Ghosh lying on the ground with bare foot. Defence examined none.

6. I have heard the argument of learned counsel of both sides and also have gone through the evidence on record.

7. The point for decision in this case is that -

(1) Whether accused Dibyajyoti Chakraborty on 31-08-2018 at about 2.15 p.m. asked Jit Ghosh and Ashok Bhuyan to drag a welding machine which was connected with electricity without taking any precaution to avoid any danger to human life and thereby committed an offence punishable under section 287 of the IPC?

(2) Whether Jit Ghosh had died of electrocution while he dragged a welding machine at the request of accused Dibyajyoti Ghosh which was connected with unprotected electricity and thereby the accused committed culpable homicide not amounting to murder punishable under Section 304 of IPC?

Discussion, Decisions and reasons thereof :

8. In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.

9. **PW 1**, informant Sekhar Ghosh stated that on the day of incident Jit Ghosh along with another were working in the factory at Phulbari TE. At that time, two workers who were working in welding machine, took rest for sometime near the welding machine. They told Jit Ghosh to clean the place by keeping aside the welding machine. As soon as Jit Ghosh touched the welding machine, he died at the spot due to electrocution. Regarding the incident, he lodged the FIR.

During cross, PW1 stated that the welding machine was an old one for which it was repairing on the day of incident. When he reached

the place of occurrence, the welding machine was not connected with power source. He also stated that the welding machine belong to the tea garden and for the incident, the family of the deceased already received compensation from the Tea Garden Authority. He did not know who were working with the welding machine. He denied the fact that he stated before police that "the factory Manager instructed the work distributor to depute two persons and accordingly Jit Ghosh and Ashok Bhuyan were engaged".

10. PW2 Babul Ghosh stated that hearing about death of his nephew due to electrocution, he rushed to the factory of Phulbari TE where the incident occurred but, before his arrival Jit Ghosh was taken to Phulbari Hospital. Thereafter, he went to the hospital and saw the dead body of Jit Ghosh. He heard that on the day of incident, when the workers were working with the welding machine, asked Jit Ghosh and another to push the welding machine, but, as soon as Jit Ghosh hold the machine, he got electrocuted and died at the spot. When another one tried to pull Jit Ghosh, he also jolted. Police conducted inquest upon the dead body vide Ext.1.

During cross-examination he testified that deceased Jit Ghosh worked in Phulbari Tea Garden.

11. PW3 Prahlad Patnayak also heard that on the day of incident when workers were working with the welding machine of the garden, at that time Jit Ghosh and Ashok Bhuyan were working in the water filter of the garden. At that time, the workers who were working with the welding machine, asked Jit Ghosh and Ashok Bhuyan to push the welding machine, but, as soon as Jit Ghosh holds the machine, he got electrocuted and died. Ashok Bhuyan also got jolted due to electrocution when he tried to pull Jit Ghosh.

In cross-examination PW3 stated that hearing about the incident, he went to the place of occurrence after arrival of police. He had seen the dead body in the hospital.

12. PW4 Dibakar Nayak in his deposition stated that he heard that on the day of incident while Jit Ghosh and Ashok Bhuyan were working in the water filter of the garden, the workers who were working in the welding machine of the garden, asked Jit Ghosh and Ashok Bhuyan to push the welding machine but, as soon as Jit Ghosh hold the machine, he got electrocuted and died at the spot. Ashok Bhuyan also got jolted due to electrocution when he tried to pull Jit Ghosh. He stated further that the wire of the welding machine was lying upon water. Circle Officer of Chariduar conducted inquest(Ext.1) upon the dead body.

During cross-examination PW4 stated that as he was reported by his sister that deceased and the injured were already shifted to hospital, so, he went to the hospital and had seen the dead body of Jit Ghosh in the hospital.

13. PW5 Nirmal Bhuyan, the employee of Phulbari TE stated that accused obtained the work to install boring in the tea garden. On the day of incident, the accused requested him to provide two labourers to carry sand for the work of boring to which he entrusted Jit Ghosh and Ashok Bhuyan to help in pulling the welding machine. As soon as Jit Ghosh pulled the welding machine he got electrocuted and died. He stated further that he received the information about the death of Jit Ghosh when he was in factory.

In cross-examination PW5 stated that he entrusted Jit Ghosh and Ashok Bhuyan to help the accused at around 8.30 a.m. and he heard the incident at around 11.30 a.m. After distributing the works to the labourers, he proceeded to attend his duty in the garden factory. He had not seen the incident personally.

14. From the evidence of PWs, it reveals that on the day of incident accused Dibyajyoti Chakarborty the Service Engineer of Green Energy Solutions Pvt. Ltd. was working in a Water plant at Phulbari TE. In the Phulbari Tea Garden Jit Ghosh and Ashok Bhuyan worked as cleaner. The accused's company obtained the work to install water plant in the

tea garden. The testimony of the victal witness PW 5, the employee of Phulbari Tea Estate revealed that on the day of incident, accused requested him to provide two labourers to carry sand for work of waterplant to which Nirmal Bhuyan entrusted Jit Ghosh and Ashok Bhuyan to help in pulling the welding machine. But in going to discharge his entrusted duty, when Jit Ghosh touched the welding machine, he got electrocuted and died at the spot. He admittedly had not seen the incident.

15. In statement recorded under Section 313 CrPC, the accused pleaded that the welding machine was provided by Phulbari Tea Garden for the work of water plant and when he went inside the factory at around 2.00 PM to bring some tools, he was informed about the sad incident. His statement also disclosed that the welding machine was provided from the Phulbari Tea Estate and electric line to the welding machine was connected from the main electric supply of the factory of the garden. There is no any evidence as to whether at the time of incident, the welding machine was connected to electric system. The evidence of PWs also does not reflects that at the time of incident, accused was present there. Prosecution also failed to adduce any evidence that the accused neglected in taking any pre-caution in going to work of water plant as a result of which the deceased died. It might be due to mechanical defect of the welding machine and the accused might have no knowledge about it. From the evidence of PWs adduced by the prosecution as well as taking the note of the statement of the accused u/s 313 Cr.P.C., possibility of some kind of electricity connectivity problem of the welding machine supplied by the Tea Garden cannot be ruled out. So, from the above discussion, I am of the considered opinion that it cannot be held that death of the deceased is covered by 5 exceptions of Section 300 I.P.C to held him guilty for committing culpable homicide not amounting to murder.

16. In the above, facts and circumstance of the case, I unhesitatingly hold that the prosecution failed to prove the guilt of the

accused beyond any shadow of doubts. Accordingly, accused Dibyajyoti Chakraborty is acquitted from the charge u/s 287/304 IPC and set him at liberty forthwith. His bail bond shall extended till next six months in view of section 437 A of Cr.PC.

- 17.** Send back the GR case to the learned committal court.
- 18.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **20th day of February, 2021.**

(I.Barman)
Sessions Judge,
Sonitpur:Tezpur.

Dictated and corrected by me.

(I.Barman)
Sessions Judge,
Sonitpur: Tezpur.

APPENDIX

Prosecution Witness

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|----|--------------------------|----|---------------------------|
| 1. | Prosecution Witness No.1 | :- | Shekhar Ghosh, Informant. |
| 2. | Prosecution Witness No.2 | :- | Sri Babul Ghosh. |
| 3. | Prosecution Witness No.3 | :- | Sri Prahlad Patnayak, |
| 4. | Prosecution Witness No.4 | :- | Sri Dibakar Nayak, |
| 5. | Prosecution Witness No.5 | :- | Sri Nirmal Bhuyan. |

EXHIBITS.

Exhibit 1 : Inquest Report.

(I.Barman)
Sessions Judge,
Sonitpur, Tezpur