

(2002) 08 DEL CK 0198

Delhi High Court

Case No: Criminal M (M) 3064 of 2001

Ashok Gandhi

APPELLANT

Vs

The State NCT of Delhi,
Constable Ravinder
(No. 995/N), Constable
Chetan Kumar (No.
1015/N) and HC
Pramod Kumar (383/N)

RESPONDENT

Date of Decision: Aug. 1, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 173(2), 173(3), 173(8), 299
- Penal Code, 1860 (IPC) - Section 304

Citation: (2002) 08 DEL CK 0198

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: S.S. Gandhi and Sumeet Mehta, for the Appellant; Richa Kapur, for State, O.N. Vohra and S.M. Anis, for R 2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

Petitioner (Ashok Gandhi) seeks quashing of the order dated 21st June, 2001 passed by the learned Metropolitan Magistrate, Delhi in FIR 24/2001 Police Station Sadar Bazar.

2. Some of the relevant facts are that there is a market where the shop of the deceased was situated. It was a narrow market. It has various types of shops on both sides. It appears that the entrance of the market is just two-and-a-half feet to three feet wide. Most of the shopkeepers seemingly are in the habit of putting stools in front of their shops for convenience of their customers. This blocks the passage.

3. On 11th October, 2000 some police officials are alleged to have visited the market. Head Constable Pramod Kumar was also one of them. They started picking the stools lying in front of the shops. The stools belonged to Shri Diwan Chand, Sohan Lal, the deceased Ashwani Kumar and others. Most of the shopkeepers on their stools being picked up did not pursue for return of the stools. The deceased is alleged to have followed the police party till the main road. He requested them to return the stool. Head Constable Pramod Kumar and constable Ravinder had an argument with the deceased. The deceased even tried to snatch his stool.

4. It is asserted that Head Constable Pramod Kumar had caught hold of the deceased from the collar and neck. The deceased was pushed with force. He hit a moving handcart. Other constables had hit the deceased in the abdomen and ribs. On the petitioner's side it has been alleged that the deceased was even dragged to the clinic of Dr. Pritam Singh. The deceased had almost collapsed and by the time they reached the Ganga Ram Hospital he was declared to have been brought dead.

5. Certain enquiries had been conducted. The Additional District Magistrate opined that head constable Pramod Kumar and two constables had committed culpable homicide not amounting to murder. However, report u/s 173 Code of Criminal Procedure to the contrary was submitted to the learned Metropolitan Magistrate. The learned Magistrate heard the complainant and others and accepted the report. In other words, it was held that offence u/s 304 Part I of the Indian Penal Code was not drawn in the facts and circumstances of the case.

6. Aggrieved by this order the present petition has been filed.

7. Learned counsel for the respondent had taken up a preliminary objection that the present petition is not maintainable invoking Section 482 of the Code of Criminal Procedure because there is no order of the court and Therefore question of using the inherent powers of the court will not arise.

8. To appreciate the said argument reference can be made to Section 173 of the Code of Criminal Procedure. It provides that every investigation has to be completed without unnecessary delay. Sub-section 2 to Section 173 further clarifies that when investigation is complete the officer in charge of the police station shall forward to the Magistrate a police report in a prescribed form. Pending orders of the Magistrate a superior officer can under Sub-section 3 to Section 173 direct further investigation. Sub-section 8 to Section 173 reads as under:-

"(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of

Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2)."

9. These provisions came up under the gauge of the Apex Court in the case of [Bhagwant Singh Vs. Commissioner of Police and Another](#), . The Supreme Court on appraisal of the relevant provisions held that principle of *audi alteram partem* would come into play and an injured person or any relative of the deceased is entitled to be heard by the Magistrate. It was concluded as under:-

"The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal Procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate, has locus to the consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear (healed).

6. Scratch abrasion ,0.5x0.5 cm. Reddish cuticle partially separated area bark of joint of middle and base pharynx of left index finger."

12. It is apparent from the nature of the injuries pointed out above that though during the course of investigation it had been found that there were injuries caused on the abdomen of the deceased none had been noticed. The statement of the witnesses Therefore who appointed on behalf of the petitioner cannot be accepted on its face value.

13. In addition to that certain clarifications were sought with respect to said injuries. The clarifications were:-

"1. Whether injuries at sl. Nos. 2,3,4 and 6 of the post mortem report could be caused when Sh. Ashwani Kumar Gandhi was put into a cycle rikshaw to a TSR and taken to Ganga Ram hospital from Sadar bazar.

2. Whether these injuries were sufficient to cause the death of Sh. Ashwani Kumar Gandhi a had any direct bearing on his death.

3. Whether in natural circumstances, Sh. Ashwani Kumar Gandhi in the back ground of clinical history as mentioned in the Histopathology report could die of heart failure with a

little exertion or tension."

14. The Board of Doctors opined that injuries, 2, 3, 4 and 6 were possible in shifting the patient from and Explanation 1 to Section 299 reads as under:-

299. Culpable homicide - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1. -- A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

16. Reading of the aforesaid would clearly show that though a person who caused bodily injury to another who is labouring under a disorder and accelerates the death is deemed to have caused the death, but what cannot be ignored is that there has to be an act done with intention causing death or with intention of causing such bodily injury as is likely to cause death or knowledge that it is likely to that such an act can cause death. In the present case such intention is totally missing. As is apparent they were removing the stools. The deceased followed them. His heart ailment was aggravated. Any injury cannot be believed to have been caused by the private respondents. To that effect the oral evidence cannot be believed. Such a knowledge even cannot be attracted. Therefore, Explanation 1 to Section 299 cannot be held in its isolation. When necessary ingredients of Section 299 are not proved, there is no ground to set aside the findings of the learned trial court.

17. For these reasons petition being without merit must fail and is dismissed.