

(2005) 07 DEL CK 0112

Delhi High Court

Case No: Criminal M.C. No. 1961 of 2004 and Criminal M.A. No. 6419 of 2004

Gulijeet Singh Kochar and
Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 5, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 173(3), 173(8), 482
- Penal Code, 1860 (IPC) - Section 304A

Citation: (2005) 121 DLT 516 : (2006) 1 RCR(Criminal) 618

Hon'ble Judges: Surinder Kumar Aggarwal, J

Bench: Single Bench

Advocate: A.S. Chandhiok, Sidharth Luthra and S. Sinha, for the Appellant; Richa Kapur, Additional Public Prosecutor, for the Respondent

Judgement

S.K. Agarwal, J.

By this petition u/s 482 of the Criminal Procedure Code, 1973 (for short, "the Code") petitioners have prayed for quashing of the order dated 15.7. 2004 passed by the Metropolitan Magistrate, Delhi summoning them to face trial for the offence u/s 304A, IPC in the case FIR No. 46/2003, P.S. Lodhi Colony, New Delhi.

2. Prosecution case briefly is as follows : On 15.4.2003, Niranjana Singh Tanti lodged a report to the Police, alleging that he and his brother Ram Dulare Kumar were working as labourers under Madan Lal, Contractor (hereinafter referred to as "the contractor") who was constructing house No. 129, Jor Bagh, New Delhi (for short, "the house"). The contractor had made a temporary passage for going to the basement out of old wooden planks without providing proper support. He was told that it was dangerous and some one can fall, he ignored the request and told them to work. On the fateful day, at about 4.00 p.m. his brother while carrying building material on his head, was going to the basement through that wooden passage; he

fell down in the basement and received injuries and became unconscious. He was immediately removed to the hospital where he was declared dead. It is stated that Ram Dulara died because of rash and negligent act of the contractor. On this statement, above noted case was registered. The contractor was arrested and after completion of investigation, charge-sheet u/s 173, Cr.P.C. was filed; cognizance of the offence was taken and the accused was summoned. On 1.5.2004, learned Trial Court observed that in the agreement dated 2.1.2003 between the owner and the contractor, for construction of the building, there is no clause as to who would be responsible for any offence; that the owner had not signed the agreement and that the same could not be looked into; the Investigating Officer had not investigated the role of the owner of the property and that apparently even the owner of the house in question would be equally liable for the alleged offence. It was further observed that the SHO, as well as the ACP had not applied their mind while forwarding the challan and the same was forwarded in a very casual and non-serious manner as a matter of routine; they were directed to carry out further investigations and to submit the report before the next date of hearing Investigating Officer, SHO and DCP (South) were also directed to appear in the Court on the next date. The SHO in compliance of the order dated 1.5.2004, after further investigations, filed a report u/s 173(8), Cr.P.C., submitting therein that petitioners are doing business in the name and style of M/s. Amrita Moulding Pvt. Ltd. and that no evidence could be collected against them and that they are not in any manner responsible for the death of Ram Dulare Kumar.

3. The learned Trial Court by impugned order dated 15.7.2004 took cognizance against petitioner, summoning them for facing trial for the offence u/s 304A, IPC observing. "It is clear as per the settled law that besides the contractor, even the owner of the property is equally liable for any criminal negligence, especially as in the present case, as the death of Ram Dulare Kumar is due to the negligence of the owner, as much as that of the contractor. There is no document placed on record either by the prosecution or the accused-Madan Lal, which could absolve the owner of any criminal liability which also points towards the negligence of the owner." It was further observed that "the owner of the property is under bounden obligation, as well as duty to ensure that while making construction of the property, no mishap or accident occurs and no damage or harm comes to any person. The negligence of the owner has a direct nexus with the death of Ram Dulare Kumar, in the present case as the owner should have also taken the precaution to ensure that the construction at his property is carried out properly and not dangerously or negligently." For reaching this conclusion reference was made to the judgment reported as Tarseem Chand v. State (Delhi Administration) 1885 Crimes (1) 948; and [Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra](#), and Suleman Rehiman Mulani and Anr. v. State of Maharashtra 1967 C A R 141. This Order is under challenge. I have heard learned Counsel for the parties and have been taken through the record.

4. Learned Counsel for the petitioners argued that as per orders further investigations in the case were conducted by the police and challan was filed u/s 173(3) stating that nothing could be found against petitioners, showing their involvement in the above case. It was found that the responsibility to provide adequate protection to the labourers working at site was that of the contractor who failed to take adequate safety measures, against whom challan was already filed. Learned Counsel further argued that all payments to the labourers were made by the contractor; there was no relationship of an employer and employee between the petitioners and the laborers ;and that they were only responsible for supply building material, Therefore impugned order summoning petitioners for the offence u/s 304A is not sustainable in law. Learned Counsel for State argued to the contrary.

5. Facts are not in dispute. Question is about the scope of interpretation of Section 304A, IPC which reads as under:

"304-A Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The basic ingredients of Section 304A are: (a) that death of a person must have been caused; (b) it must have been caused by a rash or negligent act; and (c) such an act must not amount to culpable homicide. This section would apply to a case where there is no intention to cause death and no knowledge that the fact done will in all probability cause death. It only applies to cases which are rash or negligent act directly cause death of another person. In order to hold a person guilty under this section, rash or negligent act must be direct or proximate cause of death. The offence cannot be presumed merely because of an unfortunate incident. Question whether the conduct of an accused amounts to culpable rashness or negligence depends upon, as to what amount of care and circumspection which a prudent and reasonable man would consider it sufficient in the circumstances of the case. In order to establish criminal liability, facts must be such that the negligence of the accused prima facie show utter disregard to life and safety of others so as to amount to crime. The words "rashly or negligently" are distinguishable, sometimes overlapping. The Supreme Court in [Bhalchandra alias Bapu and Another Vs. State of Maharashtra](#), observed that criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was imperative duty of the accused to have adopted. It was held that criminal negligence can be found on varying sets of circumstances. These principles have been reiterated by Supreme Court in several decisions including the following:

(i) In *Kurban Hussein Mohamedali Rangwalla v. State of Maharashtra* (supra), the allegations were that the appellant allowed the burners to be used in the same room in which varnish and turpentine were stored. It was held that even though it

might be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. The interpretation of Section 304A by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap*, 4 Bom.L.R. 679, was referred with approval. It was held:

"This view has been generally followed by High Courts in India and is in our opinion the right view to take of the meaning of Section 304A. It is not necessary to refer to other decisions, for as we have already said this view has been generally accepted. Therefore, the mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable u/s 304A, for the fire would not have taken place, with the result that seven persons were burnt to death, without the negligence of Hatim. The death in this case was, Therefore, in our opinion not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence. The appellant must, Therefore, be acquitted of the offence u/s 304A."

(ii) In *Suleman Rehiman Mulani v. State of Maharashtra* (supra), the accused was charged for rash and negligent driving with only a learner's license. It was held:

"The requirements of this section are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused."

(iii) In [Ambalal D. Bhatt Vs. The State of Gujarat](#), the accused was charged for rashly and negligently manufacturing a solution of glucose in normal saline containing more than permitted quantity of lead nitrate as a result of which thirteen persons, to whom, it was administered, died. The appellant was acquitted and it was held:

"It appears to us that in a prosecution for an offence u/s 304A the mere fact that an accused contravenes certain rules or regulations in doing of an act which causes death of another, it is not established that the death was the result of a rash or negligent act or that any such act was the proximate and efficient cause of death."

6. Black's Law Dictionary (Sixth Edition) defines "criminal negligence" as under:

"Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection.

Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless

disregard of the safety of others, or willful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death."

7. Applying the above principles to the facts at hand, admittedly the petitioners are the owner of the house in question where the basement was being constructed. There is no material to suggest that construction of the basement was being done under their direct supervision. They were required to supply only the material and the construction was being supervised by the contractor as per investigations. The observation made by the learned Magistrate to the effect that on 1.5.2004, when further investigations were ordered, the agreement in question was not signed by the owner, is immaterial, as the contractor and the owner have not denied the agreement, copy of which is on record; and what is the value of the agreement cannot, be judged at this stage. Further there is no requirement of law that the construction agreement must be in writing indicating as to who would be responsible for the offence, if any. In a criminal trial the burden is on the prosecution to prove its case; question at the trial would be as to who was supervising the construction. To repeat investigation revealed that building was being constructed by the contractor. The concept of "negligence" in civil law is different from the culpable negligence punishable as an offence. There can be no presumption in this regard against the owner in criminal law. The observations made by the learned Trial Court, while directing further investigation on 1.5.2004, that apparently even the owners of the house in question would be equally liable as the contractor for the alleged offence, and the similar observation made in the impugned order, are not sustainable in law.

8. Learned Trial Court, while passing the Impugned order, placed reliance on the observations made in *Tarseem Chand v. State (Delhi Administration)* (supra). The facts in that case were entirely different, In that case, a student in a school had died as a result of the fall of a wooden plank. Petitioner therein was the contractor and building was being constructed under his supervision and he had employed the labourers. It was found that he was required to take adequate precautions for the safety of the children; and that the death was caused due to the rash and negligent act of the contractor. It was in these circumstances that proceedings initiating against the contractor u/s 304A were not quashed. Learned Additional Public Prosecutor had placed reliance on the law laid down by the Supreme Court in [Rustom Sherior Irani Vs. The State of Mharashtra](#) . In that case the repair of the chimney was being carried out under the direct supervision of the owner of the factory. The owner of the factory decided to increase the height of the chimney without consulting any qualified engineer and had kept the bakery working while the alternations were being carried out. He was present at the spot when the incident happened, Therefore, he was held to be responsible.

9. There can be no doubt that Court has the power to order further investigations; the Court has also the power to take cognizance against the accused persons(s) who is or are not sent for trial by the police, as the Court takes cognizance of the offence and not of the offenders. Taking of cognizance substantially affects the liberty of a citizen and the same can be taken only where there is prima facie material to support the charge. To recall, in this case, the report was lodged by the brother of the deceased immediately after the incident stating that only contractor was the person responsible for not taking adequate precautions for going to the basement despite requests. Police investigated the matter twice and did not find any material against petitioners. They were admittedly not at the site at the time of the incident and no rash or negligent act is attributed to them in any of the statements during the investigation. Each case depends on its own facts. Prosecution has to stand or fall on its own legs and the accused cannot be put on trial on mere suspicion in a situation like the present one.

10. For the foregoing reasons, the petition is allowed and the impugned order dated 15.7.2004 passed by the Metropolitan Magistrate, Delhi summoning petitioners for the offence u/s 304A, IPC is hereby set aside. It is clarified that any observation made herein would not affect the merits of the case against the contractor during the trial.

Trial Court record be sent back.

11. Petition stands disposed of.