

(2018) 04 SC CK 0137
In the Supreme Court Of India
Case No : Criminal Appeal No. 650 Of 2018

Akbar Hussain

APPELLANT

Vs

State Of Jammu And Kashmir & Anr

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 299, 300, 302, 304
Code Of Criminal Procedure, 1973 — Section 161, 164A, 227

Citation : 2018 AIR 4314 : 2018 (16) SCC 85 : 2018 (8) Scale 553

Hon'ble Judges : A.K. Sikri, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Gaurav Agarwal, Siddhartha Jha, M. Shoeb Alam, Irshad Ahmad

Final Decision : Allowed

Judgement

A.K. Sikri, J

1. Leave granted.

2. In this appeal filed by the complainant, at whose instance FIR in question was registered, the appellant impugnes judgment and order dated May 4, 2017 passed by the High Court of Jammu and Kashmir. By the said judgment, the High Court has quashed the order dated August 9, 2014 passed by the trial court. The controversy in the present appeal is limited to the charge for which respondent Nos. 2 and 3 (hereinafter referred to as the 'accused persons') are to be tried for allegedly causing death of one Abdul Rashid on account of electrocution, under suspicious circumstances. It may be pointed out that FIR was registered against the accused persons under Section 304 of Ranbir Penal Code (hereinafter referred to as the 'RPC') for causing death by rash and negligent act. However, at the time of framing of charge, after looking into the record of the case, the Sessions Judge formed an opinion that the investigation prima facie establishes offence under Section 302 RPC (i.e. culpable homicide amounting to murder) and not under Section 304 RPC which had been wrongly invoked by the Investigating

Officer at the conclusion of the trial. Thus, vide his order dated August 9, 2014, the Sessions Judge has framed charge under Section 302 of RPC. This order has been set aside by the High Court vide impugned judgment with the observations that prima facie there is no evidence on record to justify the charge under Section 302 of RPC.

3) A perusal of order dated August 9, 2014 records the prosecution case, and there is no dispute about the prosecution story as emerged in the investigation. Crux of prosecution story is that on October 18, 2013 at Mendhar, the accused Mohd. Azad and Nazir Hussain without any authority were on patrol duty to check the fault, with common criminal intention took the deceased Abdul Rashid with them at about 5 p.m. who was having no knowledge about the electricity and made him to stand on the transofrmer in order to cut the supply of the electricity and again made the said Abdul Rashid to stand on the said transformer at about 5.45 p.m. and agave a call to Habib-ul-Rehman alias Makhana at the Grid Station Chhatttral to supply the electricity knowing the fact that due to supply of the electricity the said Abdul Rashid would be electrocuted and would die and accordingly the said Abdul Rashid received the electric current and died on spot as was intended and well within the knowledge of both the accused. After completion of the investigation, offence under Section 304/34 RPC were made out against each of the accused whereafter the challan was preferred before the court.

4) Based on the aforesaid facts and the evidence collected during investigation, the Sessions Judge noted that facts prima facie show that it was a fit case for framing charge under Section 302 RPC. Relevant discussion contained in order dated August 9, 2014 passed by the Sessions Court, while framing charge under Section 302 RPC, is as under:

"6. In the instant case, the fact that the deceased was made to stand on the transformer with the intention and knowledge of both the accused persons that by supplying electricity from the grid station the deceased would die as has been proved during the course of investigation. I have examined the statements of the prosecution witnesses recorded u/s 161 Cr.P.C. particularly, the statement of Habib-ul-Rehman alias Makhana who was called by the accused persons to supply the electricity and have also perused the relevant record including the medical report, and am of the opinion that the Investigating Officer has committed a mistake of law by framing his opinion that offence u/s 304 RPC is made out against the accused persons when from the perusal of all the documents u/s 173 Cr.P.C. culpable homicide amounting to murder punishable u/s 302 RPC is made out against both the accused persons. The Investigating Officer has appreciated the evidence which the court has to appreciate at the conclusion of the trial and the material collected by the Investigating Officer warranted the framing of charge u/s 302 RPC against the accused persons. Otherwise also if the accused is charged for commission of offence u/s 304 RPC at this stage, he cannot thereafter be convicted u/s 302 RPC in case the said

offence is made out during the course of trial which is prima facie established at this stage.

7. It is settled law that 'culpable homicide' is genus and murder is species. All 'murder' is culpable homicide but not vice versa. Ranbir Penal Code recognizes three degrees of culpable homicide. The first is defined in Section 300 and it is murder. The second is culpable homicide not amounting to murder punishable under the first part of Section 304. Then, there is culpable homicide of the third degree punishable under the second part of Section 304. The question to be considered at the first stage would be whether accused has done an act by doing which he has caused death of another. Proof of such casual connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative, the offence would be 'culpable homicide' not amounting to murder, punishable under the first or second part of Section 304, depending respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive but the case comes within any of the exceptions enumerated in Section 300 the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304 RPC.

8. In my opinion when the accused persons committed the act calling Habib-ul-Rehman alias Makhana to supply the electricity from the grid station Chattral when they had made the deceased to stand on the electric transformer knew that it was imminently dangerous that it must in all probability cause death, or such bodily injury as was likely to cause death, and committed such act without any excuse or incurring the risk of causing death amounts to culpable homicide amounting to murder under clause fourth of Section 300 punishable under Section 302 RPC and not culpable homicide not amounting to murder, does not fall within any of the exception of Section 300 punishable u/s 304 RPC. Thus offence u/s 302 read with Section 34 RPC are prima facie made out against the accused person. So the charge is accordingly framed against the present accused for the said offences."

5) In the impugned judgment, while setting aside the aforesaid order and remitting the case back to the trial court to decide the question of framing of charge afresh in the light of observation made by the High Court in the said order, the High Court has taken note of few judgments [R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp (1) SCC 335 and State of Rajasthan v. Chhittarmal, (2007) 10 SCC 792] of this Court. Thereafter, the High Court proceeded to discuss the material available

on record, as placed by the prosecution. It has observed that at the relevant time, Junior Engineer had called Makhna. Further, the trial court did not take into account the fact that the prosecution has arrayed Makhna, who had charged the line, as prosecution witness. According to the High Court, the trial court ought to have appreciated that accused was an employee of the Department and, therefore, at this stage, charge should have framed under Section 304 RPC. It has also observed that the trial court was not powerless inasmuch as under Section 227 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), it can always alter the charge in case the prosecution produces the evidence.

6) We may state at the outset that the three judgments which are referred to by the High Court were also taken note of by the trial court. The trial court rightly pointed out that all these authorities are not relevant as they do not pertain to charge/discharge stage and they are relevant to be considered at the final stage of the case after full trial. At the time of framing the charge, the trial court has to consider the material before it by the Investigating Officer and formed a prima facie opinion thereupon as to whether it is a fit case for framing of charge under a particular provision. The standard of proof test, which is to be applied at the final stage, in order to find out as to whether the accused is guilty or not on the basis of actual evidence produced is not to be applied at the stage of framing of the charge. Charge can be framed even when there is a strong suspicion founded upon materials before the Court, which leads the court to form a presumptive opinion as to existence of the factual ingredient constituting the offence alleged.

7) We are of the opinion that the High Court has misdirected itself by applying the test which is to be seen at the final stage to find out as to whether the accused is guilty of the charge or not. Learned counsel for the appellant has taken us through the statements of the witnesses recorded under Section 161 Cr.P.C. as well as under Section 164A of Cr.P.C. Having perused the material which has been collected during investigation, we are of the opinion that the order dated August 9, 2014 of the trial court framing charge under Section 302 of RPC was perfectly justified. The High Court has taken into consideration extraneous factor in setting aside that order.

8) Accordingly, this appeal is allowed thereby setting aside order dated May 4, 2017 of the High Court and restoring order dated August 9, 2014 passed by the trial court. As a consequence, the accused persons shall be tried for offence under Section 302 RPC.