
(2011) 11 MP CK 0068

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 1767 of 2010

Badri Prasad Tiwari and anr

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 304 PartII, 304A

Citation : (2012) ILR (MP) 1423

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; Nirmala Nayak, G.A., for the Respondent

Judgement

U.C. Maheshwari, J.—The applicants/accused have directed this revision u/s 397/401 of Cr.P.C. being aggrieved by the order date 4.5.2010 passed by Ist Additional Sessions Judge Rewa, in Sessions Trial No. 276/09 framing charges against each of them for the offence u/s 304-11 of IPC (for seven counts). The facts giving rise to this revision in short are that, on 24.5.2006 at Police Station Sohagi, the information regarding unnatural death of seven persons was received, on which under Sections 174 of Cr.P.C. the inquest intimations bearing nos. 5, 6, 7, 8, 9, 10 and 11 of 2006 were registered. In their enquiry by R.B. Sharma, the then Station House, Officer of such Police Station., it was revealed that on the river of Tamas at Teothar, a Pipa Pul (temporary bridge) was constructed by the Contractor Shrikant Tiwari under the guidance, supervision and observation of the Officers of the Public Works Department namely; the applicants Badri Prasad Tiwari, Jagannath Tiwari, posted as Sub-Engineers and Ramanand Tiwari, the time keeper, deputed to look after the construction and maintenance of such pipa bridge but in the lack of their devotion in performing the duties to look after the construction of such bridge, with their connivance the aforesaid contractor made the alleged Pipapul by the material of lower quality and contrary to the prescribed norms. Resultantly, on the aforesaid date 24.6.2006, on passing the alleged jeep bearing registration no. MP-17-B-4691,

having the various passengers driven by co-accused Pramod Kumar Gupta in a rash and negligent manner, on breaking such Pipa bridge fell down in the river and seven persons out of the persons traveling in such jeep had died with downing death. Initially, a crime for the offence of Section 304-A of I.P.C. was registered against Pramod Kumar Gupta, the driver of the jeep. But in further investigation, the applicants Badri Prasad Tiwari, Jaggnath Tiwari and also the Ramanand Tiwari, C.K. Verma, Hari Sumiran Dwivedi, Baidyanath Singh and the contractor Shrikant Tiwari were also found involved in the alleged crime. Besides this the Magisterial enquiry of the incident was also held. In such enquiry, it was established that the aforesaid bridge was not constructed with proper and specified material as such the lower quality iron, guarder and the wood and it's sleepers contrary to the prescribed norms and standard were used in making such bridge, and without verifying such position and completing all formalities the traffic was started on it by the applicants as administrative Officers of the PWD and due to their such act the alleged incident had taken place. In such enquiry, it was also found that the aforesaid administrative Officers of the PWD have not placed the proper sign board at both side of the bridge showing the directions of security norms which was also one of the reasons of happening the alleged incident. Simultaneously the co-accused Pramod Kumar Gupta the Jeep driver, was also found to be negligent in driving the alleged vehicle in which the deceased were traveling. Inter-alia the main cause of the alleged accident was found to be the lack of performing the duties by the applicants and some co-accused in looking after the construction of such bridge when the same was being constructed with lower quality material by the contractor Shrikant Tiwari and also the negligence of such Officers towards their duty subsequent to construction of such bridge in it's maintenance, as the alleged road of the place of incident being very busy road having the huge traffic was required proper maintenance. At the time of making the construction of the bridge with lower quality material, the applicants being Offices of PWD and other accused, except Pramod Kumar Gupta, the driver of the jeep, had knowledge of their Act that due to such act they are creating the situation to cause the death of any human being passing on such pipa bridge. Accordingly, in investigation on establishing the prima facie ingredients of the offence of Sections 304-11, 120-B and 34 of I.P.C., against the applicants and the co-accused mentioned above, they all were charge-sheeted for the same.

2. After committing the case to the Sessions Court, on evaluation of the charge-sheet, the charge of Section 304-11 of IPC was framed against the applicants, they abjured the guilt and being aggrieved by such order, have come forward to this Court with this revision.

3. Shri A.P. Singh, learned appearing counsel of the applicants after taking me through papers of the charge-sheet and other papers placed on the record along with impugned order and the charge framed said that, on taking into consideration the face value of the evidence collected by the investigating agency as accepted in it's entirety, even then the ingredients of the offence of Section

304 Part-II of I.P.C. are not made out against the applicants for framing such charge. According to him, in any case, this was not the case of more than 304-A of I.P.C. for framing the charge. In such premises, the trial Court has not evaluated the charge-sheet with proper approach and committed error in framing the charge of Section 304-11 of I.P.C. In support of his arguments, he placed his reliance on the decisions of the Apex Court in the matter of Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra, , in the matter of Afrahim Sheikh and Others Vs. State of West Bengal, , in the matter of State of Gujarat Vs. Haidarali Kalubhai, and in the matter of S. Vedantacharya and Another Vs. Highways Department of South Arcot and Others, and prayed for modification of the charge accordingly by admitting and allowing this revision.

4. Having heard at length to the applicants' counsel on admission, keeping in view his arguments, I have carefully gone through the papers of the charge-sheet placed with the police report filed u/s 173 of Cr.P.C. and also the case laws cited by the counsel. In the available circumstances before proceeding further to consider the submission of the applicants' counsel as ready reference, I deem fit to reproduce the provision of Section 299 along with one illustration of it and of Section 304-A of I.P.C., because this Court has to consider the question involved in this revision in the light of such provision of I.P.C. The same are read as under:-

299. Culpable homicide.- Who ever 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.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of there by causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b).....

Section 304-A of I.P.C. is read as under: -

[304-A. Causing death by negligence.- Whoever causes the death of any person by doing any rash and 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]

5. Undisputedly, the scope of aforesaid both the Sections of I.P.C. are different. Section 299 of I.P.C. defines the "culpable homicide" while, Section 304-A of I.P.C. speaks about accidental death of the person because of the "negligent Act" of the accused. So, in the available set of evidence collected by the investigation agency, this Court has to consider this case.

6. As per available evidence in the charge-sheet, after happening the alleged incident in which above mentioned seven persons had died, initially a crime was registered against one Pramod Kumar Gupta, for the offence of Section 304-A of I.P.C. and investigation was started. Besides the investigation the Magisterial enquiry of such incident was also ordered by the State. On holding the same, it was found that the aforesaid Contractor Shrikant Tiwari, has made and constructed the alleged Pipa bridge under the guidance, supervision and observation of the applicants contrary to the norms with lower quality material. At any point of time such type of construction was not objected by the present applicants for the reasons best known to them which is yet to be considered and adjudicated by the trial Court after recording the evidence. Accordingly, the alleged bridge was not made in accordance with the norms provided under the rules. In spite of such deformities of the bridge the applicants have recommended the completion report of the same, submitted by the Contractor, on which the alleged bridge was opened for passing the traffic of such road. Using the lower quality material contrary to the norms in making such bridge, was very well in the knowledge, of the Contractor, his deployed staff as well as the present applicants and of Ramanand Tiwari, the Time Keeper of the Public Works Department.

7. As per charge-sheet, the report of Magisterial enquiry has also been placed with it, so the same could be taken into consideration at the stage of framing the charges.

8. As per evidence available in the charge-sheet, the applicants with the knowledge that they are likely by violating of their assigned duties to look after the construction work of the alleged bridge permitted the contractor to construct such bridge contrary to the norms with lower quality material to cause death of human being and subsequently because of such type of the construction after starting the traffic by them the aforesaid jeep while passing on such bridge on breaking the bridge was fell down in the river and seven persons of such jeep had died. In such premises, the applicant are also prima facie responsible for the alleged incident.

9. In the aforesaid premises, the alleged act of the applicants with the contractor and co-accused being squarely covered by the abovementioned illustration of Section 299 of I.P.C. and accordingly the applicants have also committed the offence of culpable homicide. So the aforesaid act could not be treated to be their negligent act only defined u/s 304-A of I.P.C.

10. In investigation of the impugned case carried out by the police, the applicants, the Contractor Shrikant Tiwari and other co-accused, were also found to be involved in making the bridge contrary to the norms with lower quality material. It is also apparent from the charge-sheet that the applicants in discharging their duties had not placed the requisite notice/sign Board at both the side of such bridge showing necessary caution/direction for using the bridge. In all these factual matrix of the charge-sheet there was sufficient material

before the trial Court for framing the impugned charge of Section 304 Part-II of I.P.C. because as per evidence of charge-sheet the aforesaid culpable homicide of seven persons comes under the purview of culpable homicide not amounting to murder. As aforesaid alleged act was not carried out by the applicants with intention to cause the death of any specified person or human being, therefore, the case of Section 302 of I.P.C. is not made out but for framing the charge of Section 304-11 of I.P.C., so also of Section 304-A of I.P.C., sufficient prima facie evidence is available in the charge sheet as stated above. In such premises, the trial Court has not committed any error in passing the impugned order and framing the charge of Section 304-11 of I.P.C. against the applicants.

11. So far as the case laws cited on behalf of the applicants are concerned, the same being distinguishable on facts with the facts of the case at hand, are not helping to the applicants. The same are being taken into consideration one by one.

A. The case laws in the matter of State of Gujarat Vs. Haidarali Kalubhai, , was decided by the apex Court on some different scenario relating to cause death of a person by the accused while driving the alleged truck in a rash and negligent manner at some Kachha Road near some hotel and also the same was decided after holding the trial by recording the evidence at the stage of appreciation of the same and not at the stage of framing the charge. While, in the case at hand, the alleged incident had taken place because of using the lower quality material in making the bridge, due to which while passing the alleged jeep from such bridge the same was fell down in the river. So cited case being based on different scenario and was also decided after recording the evidence, is not helping to the applicants.

B. So far as the case law in the matter of Meshub Mahindra vs. State of M.P., reported in (1996) 6 SCC (Cri) 1124 is concerned, the same was decided taking into consideration that the alleged gas was escaped due to equipment failure, operating problems or maintenance problem, but was not decided taking into consideration that the alleged construction of the place in which the alleged gas was kept in a stock, was made by the lower quality material or contrary to the norms. In cited case considering the peculiar facts and circumstances by modifying the charge of Section 304-11, 326 and 324 and 429 read with Section 35 of I.P.C., framed by the trial Court, the charge of Section 304-A of I.P.C. with or without the aid of Section 35 of I.P.C. was directed to be framed, against the concerned accused. Which is not a situation here in the case at hand, in which the alleged incident was not happened because of only equipment failure, operating problems or maintenance problems, but was happened because of using the lower quality material contrary to the norms in making the Pipa bridge in the knowledge of the applicants. As such they did not object or make any complaint in this regard to the Department. In such premises, this cited case being distinguishable on facts, is also not helping to the applicants.

C. So far as the case law in the matter or Shamsher Khan Vs. State (NCT of

Delhi), is concerned, the same was decided taking into consideration the different scenario relating to place of manufacturing the explosive substances like bombs and was also decided after framing the charge and recording the evidence on appreciation of the same and not at the stage of framing the charge. So the same being distinguishable on facts and the stage is also not helping to the applicants.

D. So far as the case law in the matter of State of Maharashtra Vs. Salman Salim Khan and Another, is concerned, the same was decided taking into consideration that under the influence of liquor, the concerning accused while driving the car in a rash and negligent manner run over one person and caused grievous injury to four persons who all were sleeping on the foot-path, and in that premises, by deleting the charge u/s 304-11 of I.P.C., the charge of Section 304-A of I.P.C. was framed which is not the situation in the case at hand. As per available facts stated above, the alleged seven persons had not died because of running over the alleged vehicle on them but alleged incident was happened because of breaking the bridge made with the lower quality material and also till some extent of rash and negligent driving of alleged jeep by co-accused Pramod Kumar Gupta. In such premises, this cited case is also not helping to the applicants.

So far as the principles laid down by the apex Court in the aforesaid cited cases are concerned, this Court did not have any dispute, but in the available scenario of the case at hand, the same are not helping to the applicants.

12. In view of the aforesaid, I have not found any perversity, infirmity, illegality or anything against the propriety of law in the impugned order framing the charge of Section 304-11 of I.P.C. against the applicants. Consequently, this revision being devoid of any merit, is hereby dismissed at the stage of motion hearing. Pursuant to it, I.A. No. 10394/10, an application for grant of stay against further proceedings of the trial Court, is also dismissed. However, it is made clear that the trial Court shall be at liberty to consider the matter for framing the additional or alternate charge of Section 304-A of I.P.C. also. Revision is dismissed as indicated above.