

(2016) 12 CAL CK 0007
In the Calcutta High Court
Case No : C.R.R. No. 1611 of 2013

Dr. Amitava Gupta

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, Section 304, Section 304A, Section 338

Citation : (2017) 170 AIC 576

Hon'ble Judges : Indrajit Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Manjit Singh, Id. P.P. and Mr. Ayan Bhattacharya, Advocate, for the State; Mr. Sandip Bhattacharya, Mr. Anjan Datta and Ms. Runa Bhattacharya, Advocates, for the Appellant; Mr. Anand Keshri, Advocate, for the Opposite Party

Final Decision : Dismissed

Judgement

Indrajit Chatterjee, J. - This is an application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 in which the de facto complainant of Taltala P.S. Case No. 159 dated 12/05/2010 under Sections 279/338/304-II of the Indian Penal Code has assailed the order passed by the learned 1st Additional District & Sessions Judge, Fast Track Court-1, Calcutta as passed on 14/03/2013 in Sessions Case No. 41 of 2011 wherein the said court was pleased to direct that the accused motor cyclist was to be tried in respect of the offence punishable under Section 279/304A and not under Section 279/304-II of the Indian Penal Code and sent back the case record to the learned Chief Metropolitan Magistrate, Calcutta invoking the jurisdiction under Section under Section 228 (a)(1) of the Code of Criminal Procedure for disposal of the same in accordance with law after framing of charge under Section 279 and 304A of the Indian Penal Code. The de facto complainant has been prejudiced by this order as the learned trial court was not pleased to frame charge against the accused under Section 304-II of the said Code.

2. It is the contention of Mr. Bhattacharya, learned Advocate, appearing on

behalf of the petitioner that earlier as per orders dated 22.9.2011 and 14-01-2013, the same court was pleased to frame charge against the accused for the offence punishable under Sections 279/304-II of the Indian Penal Code basing on the same material available before the said court. He further submitted that in the meantime, after the order dated 14/01/2013 was passed, one revisional application was preferred by the accused which was registered as C.R.R. No. 332 of 2013 and this court as per order dated 05/02/2013 was pleased to set aside those two orders and directed the learned trial court to reconsider the matter after giving hearing the parties.

3. Mr. Bhattacharya submits by taking me to the statements of the two witnesses namely, Rajesh Kumar Gupta and Tapan Kumar Kar Chowdhury recorded under Section 161 of the Code of Criminal Procedure by the Investigating Officer to convince this court that the motor cyclist was running at a very high speed and knocked down the victim and that is enough ingredient to convince this court that actually there was knowledge on the part of the accused that the act which he was doing was enough to cause death of a human being as contemplated under Section 299 of the Indian Penal Code. He further submitted that actually the motor cyclist was not authorized to come from south to north on the A. J. C. Bose Road and as such, it is not just one hit and run case and the accused had enough knowledge regarding the outcome of the accident.

4. He relied upon one judgement of the Apex Court as reported in (2012)1 SCC (Cri) 953 (Alister Anthony Pareira v. State of Maharashtra) to convince this court that there was knowledge on the part of the motor cyclist regarding the outcome of the accident.

He also cited one Single Bench decision of the Orissa High Court as reported in 1994 Cri L J 378 (Bhramarbar Prusty and Anr. v. State of Orissa) wherein the accused gave a blow to the victim on his head and that was enough to convince the Single Bench of that court to say that it was a case under Section 304-II of the Indian Penal Code.

He also cited one decision of this court as reported in 1989 Cri L J 255 (Rajendra Singh Sethia v. The State and Ors.) - one case under Sections 420/419/468/471 of the Indian Penal Code wherein the court observed that once the charge has been framed that cannot be altered without recording any evidence.

5. It is submitted by Mr. Keshri, learned Advocate, appearing on behalf of the accused that it is not a case to come under the purview of Section 304-II of the Indian Penal Code and the court rightly directed that the accused is to be tried under Sections 279/304A of the Indian Penal Code. He submitted that earlier the orders passed by the learned trial court cannot be treated to be on record as the impugned order dated 14/01/2013 has already been set aside by this court in C.R.R. No. 332 of 2013 referred to above. He also banked upon the statements of those two witnesses to say that mere driving of a vehicle at a high speed is not enough to attract the provision of Section 304-II of the Indian Penal Code

unless it cannot be said that at what speed the driver was driving and what was the situation of the road, whether it was empty or the road was busy at that point of time.

6. On behalf of the State, Mr. Singh, learned Public Prosecutor, by producing the case diary submitted that the said part of A. J. C. Bose Road is not one-way traffic. He took me to the sketch map prepared by the Investigating Officer as I get in page no.147 to convince this court that actually there is prima facie case that the victim was trying to reach the other side of the road through a narrow space where there is no railing. He further submitted that it is to be proved before the learned trial court as to whether the said part of A.J.C. Bose Road is one way traffic and if it is found that it was one way traffic and the motor cyclist came on the wrong track of the road, then the accused can be tried under Sections 279/304-II of the Indian Penal Code and as only in that case, knowledge can be derived that what act the accused was going to commit may result in death of a human being.

7. Both Mr. Keshri and Mr. Singh submitted that the decision of the Apex Court as passed in Alister Anthony Pareira (supra) will not apply in the facts and circumstances of this case as in that case before the floor of the Apex Court the driver was driving the vehicle under the influence of liquor and that is not the situation before the floor of this court. Regarding the other two judgements, one being of our High Court and the other of Orissa High Court, it is the common submission of the defence and the prosecution that these decisions also cannot apply in the facts and circumstances this case.

8. I have noted the arguments in details. Accident cases are tackled generally by clamping Sections 279 and 304A of the Indian Penal Code and only in extraordinary cases, charge sheet is submitted under Sections 279 and 304-II of the said Code when knowledge can be imputed on the accused that the act which he was going to commit may result in death like that he was driving the vehicle after taking liquor or that he was driving the vehicle in a very busy road at a very high speed.

9. In the case before this court, it is not the case of the prosecution that this accused motor cyclist was driving the motor cycle under the influence of liquor. In every statement recorded under Section 161 of the Code of Criminal Procedure in a hit and run case, the witnesses will say that the motor vehicle was being run at a very high speed. The speed is not assessed by the witnesses and it is the assumption of the witnesses that the vehicle was running at a very high speed. The imputation of knowledge on the accused to commit a crime under Section 304-II of the said Code is to be gathered from the police papers at the time of framing of charge. Simply because the Investigating Officer has submitted charge sheet under Sections 279/304-II of the said Code the court is not bound to act on the same without assessing the other materials as available in the police papers.

10. This court is satisfied that the decision of the Apex Court as passed in Alister Anthony (Supra) cannot apply in the present case as the factual aspect before the Apex Court cannot match with the factual aspect before this court. Regarding the decision of our High Court in Rajendra Singh Sethia (Supra) this court likes to say that the said decision also cannot apply in this case as the order passed by the learned trial court on 14/01/2013 was set aside by this court and the learned trial court was directed to re-assess the matter and as such there was no order as regards framing of charge.

11. Regarding the decision of Orissa High Court, it was alleged by the prosecution that the victim was assaulted on his head by the accused and as such factual matrix cannot match with this case.

12. This court is in the dark as to whether the road through which the victim was crossing was one way and the motor cycle entered into that one way traffic violating the traffic rules. It is to be assessed by the learned trial court at the time of trial and if it is found that there was such violation, then the learned trial court by exercising its discretion granted under Section 216 of the Code of Criminal Procedure, 1973 may alter the charge but till this is done, there is no reason to impeach the order passed by the learned trial court. This court, on the factual matrix before this court, is not satisfied that there was knowledge on the part of the accused that the act he was going to do may cause death of human being. However, the matter be left open for the decision by the learned trial court on recording the evidence of two eye witnesses, namely, Rajesh Kumar Gupta and Tapan Kumar Kar Roy Chowdhury. If necessary, learned trial court may examine the Investigating Officer just after examining those two witnesses to assess this point as to whether the motor cyclist entered into one-way traffic zone violating the traffic rules.

13. In view of the observations made above, this criminal revisional application is dismissed.

14. Learned Chief Metropolitan Magistrate, Calcutta, is directed to transfer the record to any other learned Metropolitan Magistrate and on receipt of the said record such learned Metropolitan Magistrate shall try to dispose of the case as early as possible, preferably within six months of the receipt of the record.

15. No adjournment should be allowed at the instance of the parties casually.

16. Learned trial court may adhere to Section 309 of the Code of Criminal Procedure as regards day to day trial of the case to maintain the time schedule.

17. Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.