

(2019) 06 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Petition No. 100869 100870 Of 2019

Gangappa S/O. Shivappa Shintri

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 04-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 299, 300, 304, 337, 338

Citation : (2019) 06 KAR CK 0006

Hon'ble Judges : B.A. Patil, J

Bench : Single Bench

Advocate : M.T. Nanaiah, Jagadish Patil, V.M. Banakar

Final Decision : Dismissed

Judgement

1. Criminal Petition No.100869/2019 is filed by accused No.3 & Criminal Petition No.100870/2019 is filed by accused No.2 under Section 439 of

Cr.P.C. seeking their release in Crime No.46/2019 of Sub- Urban Police Station, Dharwad for the offences punishable under Sections 304, 337, 338 of

IPC.

2. I have heard the learned Senior Counsel Sri. M.T.Nanaiah for Sri. Jagadish Patil, Advocate for the petitioners-accused Nos.2 and 3. For the

respondent-State I have heard Sri. V.M.Banakar, Addl. State Public Prosecutor.

3. The genesis of the case of the complainant is that the Assistant Commissioner, HDMC, filed the complaint alleging that R.S.No.1, Housing Site

No.11A to 11E, measuring 9 guntas 3.50 anas of Kumareshwar nagar, Dharwad was purchased by a partnership firm viz, M/s. Sri. Renukadevi

Constructions, Dharwad. It is further alleged in the complaint that the said firm sought permission for construction of a commercial building by

preparing the plan and construction work was started after obtaining necessary permission. Since basement and two parking basements were finished

with all work, they requested to issue permission to occupy the same through all the partners and the corporation has given permission to use the

ground floor and first floor subject to imposing the condition that they have to take security and safety measures and it is the owners, Architect and the

building Engineers who are responsible to any act as the remaining building was under construction. The owners of the Renukadevi Constructions and

the person, who prepared the map, and the supervisors have not followed the rules and they have constructed the low quality work by using the low

quality material and even though they knew that by use of such material if it is constructed, it will be endangering the human life even, and inspite of

that with an intention/knowledge they constructed the said building and let out the basement though it was under construction. In that light on

19.03.2019 at about 4 p.m. the entire building collapsed because of the low quality work and as a result of the same 19 lives have been lost and about

54 persons suffered injuries and also the material which was kept was damaged. On the basis of the said complaint a case has been registered.

4. It is the submission of the learned Senior Counsel Sri. M.T.Nanaiah that the accused-petitioners are the partners, the entire work was entrusted to

the contractor and engineers and they had nothing to do with the quality and quantity of work which has been carried out. It is his further submission

that ex-facie the provisions of Section 304 of IPC are not attracted. It is his further submission that there must be a nexus between the cause of the

demolition and the act of the petitioners-accused. It is his further submission that Section 304 totally excludes the ingredients of Section 299 or 300 of

IPC. In case of Section 299 or 300 that there will be intention to cause the death, but in 304 it is the only knowledge that which make a room for

serious charge of culpable homicide not amounting to murder. It is his further submission that the facts found in the case do not make out a case of

any willful or deliberate act on the part of the accused-petitioners in order to cause death of the deceased persons. It is his further submission that the

accused-petitioners, in no way are concerned with the cause of death. No direct rash and negligent act can be attributed on them and there is no

proximate and sufficient cause to connect them to the alleged crime. He further submitted by relying upon the decision in the case of Keshub

Mahindra Vs. State of Madhya Pradesh reported in LAWS (SC) 1996 94 that accused had no intention to cause the death of human beings while constructing the building. It is his further submission that the accused had no knowledge that the said building is going to collapse and as such the provisions of Section 304 of IPC are not attracted and even other offences that which have been leveled against the petitioners are not punishable with death or imprisonment for life. It is his further submission that even vicariously the petitioners-accused are not liable in order to make them liable. In case of a vicarious liability there must be relationship of the master and servant. It is his further submission that the alleged offences are triable by the Court of the Magistrate. The accused petitioners are not required for the purpose of further investigation or interrogation. They are ready to abide by the terms and conditions that may be imposed by this court and are ready to offer sureties. They are not the persons to abscond. He also relied upon the decision rendered in the case of Baldev Raj Kapoor Vs. The State of Delhi High Court in Crl. Rev. (P). 431/2005 & Crl. M.A.No.5436/05 so also two more decisions of the Co-ordinate Bench of this Court. On these grounds he prayed to allow the petitions and to release the petitioners-accused on bail.

5. Per contra, the learned Addl. SPP vehemently argued and submitted that the matter is still under investigation. The prosecution has to collect evidence regarding the culpability and the material used for the purpose of construction and thereafter the opinion of the experts has to be obtained. It is his further submission that 19 persons have died and about 54 persons got injured and some property has been lost only because of the gross negligence on the part of the petitioners-accused and the other accused persons. It is his further submission that the statement of the witnesses, who were constructing the said building, shows that though the said witnesses had brought to the notices of the owners and the engineers that the quality of the construction is not good and already there were cracks, and in spite of the said report by the labourers they have not taken care either to get the persons who were staying as a tenant in the ground floor to vacate, contrarily they allowed to repair the said defects allowing the tenant and other persons to stay. That itself clearly goes to show that the said low quality work and the building may collapse was within the knowledge of the

accused-petitioners and the other accused persons. Though it was within their knowledge that building may collapse they have not taken any proper steps and ultimately the building collapsed and 19 persons died. Under the said facts and circumstances, he prays to dismiss the petitions. It is his further submission that the accused-petitioners are highly influenceable persons; if they are released on bail they may tamper the prosecution evidence and they may try to destroy the evidence and other material, so as to deprive the prosecution in succeeding in its case. On these grounds, he prayed to dismiss the petitions.

6. This case relates to the collapse of building that was under construction and the basement was given to some of the tenants. Due to the collapse 19 persons died and 54 persons suffered injuries and the property belonging to the tenants was also lost. This fact is not in dispute. It is the submission of the learned Senior Counsel that the provisions of Section 304 is not going to be attracted to the present facts of the case on hand since the work had been entrusted to the contractor and engineer to construct the building and they are not responsible for the alleged incident. Before going to consider the said fact, I feel it just and proper to quote Section 304 of IPC, which reads as under:

304. Punishment for culpable homicide not amounting to murder- Whoever commits culpable homicide not amounting to murder shall be punished with (imprisonment for life), or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CLASSIFICATION OF OFFENCE

Part I: Punishment " Imprisonment for life, or imprisonment for 10 years and fine-cognizable- Non-bailable-Triable by Court of Session-Non-compoundable.

Part II: Punishment-Imprisonment for 10 years, or fine, or both-Cognizable " Non-bailable-Triable by Court of Session-Non-compoundable."

7. A plain reading of the above said Section makes it clear that it is in two parts. The first part of the Section is generally referred to as "Section

304 part-I", whereas, the second part as "Section 304 part-II". It appears that if such bodily injury as is likely to cause death is intentionally

caused and results in death of the victims the case would fall under part-I of Section 304 of IPC. Part-II of Section 304 of IPC comes into play when

death or bodily injury is caused by doing an act with the knowledge that it is likely to cause death and when such act is the infliction of a bodily injury,

the infliction must be not intentional. A person who intentionally causes the bodily injury with knowledge that such act is likely to cause death must

necessarily be a person who does an act with the intent to cause bodily injury likely to result in death. It is further observed that the legislative intention

in bifurcating the above said Section is that the Court has to gather at the time of Trial so to whether there was any intention or knowledge in doing the

act which caused the death. The intention to cause the death or the knowledge that death will probably be caused is essential and is that to which the

law principally looks. It is of the utmost importance that those who are entrusted with the judicial powers should clearly understand and thereafter

apply the said provision. The existence of the intention and the knowledge can be attributed only when all the facts and circumstances are looked into.

8. Keeping in view the above said facts and circumstances, and the proposition of law let us consider the case on hand. It is the specific contention of

the learned Addl. S.P.P. that the Statement of the witnesses shows that the building was not being constructed with good material and already some

cracks had taken place and the same had been brought to the notice/knowledge of the accused-petitioners along with the engineers, but they did not

take care to get the tenants vacated and got the building repaired or suitable steps were not taken. This is the crucial point which is going to determine

whether the provisions of Section 300 or Section 304 of IPC is going to be applicable to the present petitioners-accused or not. This court is conscious

of the fact that a hair line distinction is there between the two provisions, viz., Section 304 Part I & II. If facts of the case attracts Section 300 or

Section 304 part-I, then it will be serious one and accused-petitioners are not entitled to be released on bail. The facts show that, 19 deaths have

taken place and 54 persons have suffered injuries and that the investigation is still in progress, and the charge sheet has also not been filed. Under the

said facts and circumstances I feel that the material which has been produced by both the parties is not sufficient to arrive to the conclusion to know whether there was any intention or not.

9. I have carefully and cautiously gone through the decisions quoted by the learned Senior Counsel. In all those cases already charge sheet had been filed and in some cases they are at trial stage and some cases, the cases have been concluded. Under those facts and circumstances the said proposition of law has been laid down. I am not having any difference of opinion regarding the ratio laid down by the Honâ??ble Apex Court and other Courts in those cases. But with all due respect, the facts in the said case and ratio laid down are not applicable to the present facts of the case on hand. Even the learned Addl. S.P.P has also contended that vicariously the petitioners are liable. The said aspect requires proper appreciation with all material.

10. Under the said facts and circumstances, I feel that for the present it is not now just and proper to release the petitioners-accused Nos.2 & 3 on bail that too when full investigation is not finished and final report is also not yet filed. In that light, both the petitions are liable to be dismissed and accordingly they are dismissed.

However, it is made it clear that liberty is given to the petitioners-accused to apply for regular bail afresh after filing of the charge sheet.