

(2019) 01 GUJ CK 0080
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 17681 Of 2017

Gopalbhai Dayalani, Deputy General Manager (Technical)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 114, 299, 300, 304, 304(A)

Citation : (2019) 01 GUJ CK 0080

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Rajesh K Savjani, A S Timbalia, Jirga Jhaveri

Judgement

1.0 The present application has been filed by the applicant-original accused no.1 under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for short) seeking quashing and setting aside the F.I.R. being C.R.No.I-99 of 2017 registered with Bavla Police Station, Ahmedabad (Rural) for the offences punishable under sections 304(A) and 114 of the Indian Penal Code, 1860 ("the IPC" for short).

Rule. Ms.Jirga Jhaveri, learned APP waives service of Rule for the respondent-State. Mr.Timbaliya, learned advocate waives service of Rule for the respondent no.2-original complainant.

2.0 The brief facts as alleged in the impugned FIR are as under:-

2.1 The applicant is discharging his duties as Deputy General Manager (Technical) with Energy Efficiency Services Limited, a Joint Venture of PSUs Ministry of Power Government of India which is appointed as the nodal agency for implementation of the project of LED Street Lights in 162 Urban Local Bodies (ULB) and 8 Municipal Corporations within the State by Government of Gujarat. The applicant is discharging his duties in official capacity looking after technical work of the Energy Efficiency Services Limited as per work allotted. The applicant

further submits that EESL Company is concerned with replacement of LED light in place of old light. The applicant further submits that after successfully replacing the old light with LED light the company has not received any complaint in relation to working of LED light from ULB (Bavla Municipality).

2.2 The contents of the F.I.R. reveal that it is stated by the respondent no.2 that he is residing at with his family consisting of three children (two sons and one daughter) Rajveer, aged about 14 years, Pratham, aged about 10 years and daughter Jenalba, aged about 15 Years and further declared that he is engaged in the business of water plant near Kankavati Hotel in the name and style of Tulsi water plant.

2.3 It is further inter alia, disclosed by respondent no.2 that in his society, since last more than one month, the electric pole is being installed by Nagarpalika having LED lights. There are in all seven electric pole in his society having LED lights which is in operation from 7.00 p.m to 7.30 a.m. It is further alleged in the F.I.R. that on 12.06.2017, he was at his work place and from there, he went to Bagodara for distribution of water work where he received information that the Hon'ble Governor of Bihar is on visit at that place. At the time of returning to his work place after completion of work at Bagodara, he received a phone call from his wife cell phone used by neighbour Dharaben Pravinsinh Sagggar that his son Pratham has received an electric shock, and therefore, he informed him to approach at the hospital of Dr. Chhintanbhai.

2.4 It is further alleged in the FIR that when he reached at the hospital of Dr. Chhintanbhai, it was informed to him that his son has been shifted to Vedant Hospital Bavla for further treatment. It is further declared that when he reached at Vedant Hospital, it was informed to him that his son has been taken to Shelbi Hospital, Opp. Karnavati Club Ahmedabad. Therefore, he and his friend Hasubhai Tohhabatsinh Gadhvi and Anilbhai Gadhvi with Khodubha odiya together left Bavla for Shelbi Hospital and reached there at 8.30 p.m where his son was under treatment in emergency ward, at that point of time, his brother Dilipsinh, father and his wife accompanied with Kiritsinh Bahadursinh Gohil etc. who were present there. His brother Dilipsinh had informed him that his son has died and asked him to reach at home. It is stated that the dead body of his son was also taken in at car by Shri Hitubhai Vishnubhai Chavda and Pravinsinh Bhupatsinh etc. On 13.06.2017, cremation of his son body was done. The aforesaid activity of cremation was not informed to the police and no post mortem was done.

2.5 It is further declared by the respondent no.2 that thereafter on 22.06.2017 (i.e. after 10 days of incident), when he went to his home Bavla and visited the place where his son received an electric shock, he noticed that in the bottom of iron pole of electric street light there was a hole in which the wires of red and black colored were seen outside and a wire for electric supply was lying on the ground which was separated and because of that his son got electrocuted. It is further alleged that in the street light pole, there was a loose joint, from where the electric current passed on the pole and his son who was playing near the pole

got electrocuted which resulted in his death. Thereafter, the FIR of accidental death was declared and got registered on 21.06.2017. Thereafter, on inquiry from Nagarpalika in relation to electric current, it came into knowledge that the contract for fitting LED light is given to the applicant herein and because of negligence of the applicant and the officer of the Narpalika, the incident took place. It is submitted that on the above stated accusation an FIR came to be registered with Bavla Police Station against applicant and the officers of the Bavla Nagarpalika for the offence punishable under section 304A and 114 of Indian Penal Code.

3.0 Mr.Rajesh Savjani, learned advocate for the applicant-original accused no.1 has submitted that though the incident took place on 12.06.2017, the first informant had approached his home at Bavla on 22.06.2017 and alleged to have visited the place of incident on the said date where he found wires outside the pole, but he did not lodge FIR immediately and waited till 03.07.2017 for disclosing the alleged incident.

3.1 Learned advocate Mr.Savjani has further submitted that the applicant is discharging his duties with nodal agency as Deputy General Manager (Technical) and has nothing to do with electric pole where the incident has been occurred. He has submitted that the applicant has been falsely roped in the criminal proceedings and in fact, he has nothing to do with the alleged incident since he had no intention or knowledge of committing any harm. He has submitted that the ingredients of Section 304(A) of the IPC do not satisfy in present case and in fact, negligence and lapses are on the part of the Municipality Officer in not conducting timely, proper and effective measures of maintenance of electric pole.

4.0 In support of his submissions, learned advocate Mr.Savani has placed reliance on the judgment of this Court in the case of Madhavji Dhanjibhai Patel Vs. State of Gujarat [2016 (1) ACC 165]. In the said case, this Court has held that there is a fine distinction between Section 304 and Section 304(A) of the IPC. He has submitted that thus, the applicant being a Manager had no intention to cause death and no knowledge that the act done in all probabilities will cause death in an accident.

5.0 In this view of the matter, he has submitted that the FIR may be quashed and set aside.

6.0 Ms.Jirga Jhaveri, learned APP for the respondent- State has submitted that the accident has occurred due to S.P.D. short circuit. She has further submitted that as per the report, contract was given to one E.E.S.L. Company. The present applicant was discharging his duties as Deputy General Manager in the said Company. On 14.12.2016, because of agreement between Deputy General Manager (present applicant) of E.E.S.L. Company and Chief Officer, Bavla Nagar Palica, E.E.S.L. Company got contract of replacing the street light with L.E.D street light. On the basis of the said agreement, E.E.S.L. Company had given sub-contract of the same to the Surya Roshani Company. The Surya Roshani

Company had further given contract of the same to the Chatur Electric, Ajmer, Rajasthan.

6.1 Learned APP while placing reliance on the report has submitted that as on 05.01.2019, the street light contract was being supervised by one Ajitmuya Miyasaheb and he was taken to the place of incident. It was noticed that the LED which was fixed on the concerned pole where electrocution of son of the complainant has taken place, there was a S.P.D. short circuit which had burnt and because of that S.P.D. short circuit, the electric current had passed in the pole, wherein by on touching of the said pole, the son of the complainant electrocuted.

6.2 Learned APP Ms.Jirga Jhaveri has submitted that thus, present applicant would be held liable for the incident and present FIR may not be quashed at this stage and the investigation may be further allowed to be proceeded further.

7.0 Heard learned advocates for the respective parties at length.

8.0 It is not in dispute that the present applicant is discharging his duties as Deputy General Manager (Technical) with Energy Efficiency Services Limited, a Joint Venture of PSUs Ministry of Power, Government of India, which is appointed as the nodal agency for implementation of the project of LED Street Lights in 162 Urban Local Bodies (ULB) and 8 Municipal Corporations within the State by Government of Gujarat. The report of the Investigating Officer reveals that the E.E.S.L. Company had given sub- contract to the Surya Roshani Company. The Surya Roshani Company had further given sub-contract to the Chatur Electric, Ajmer, Rajasthan. It is further stated in the report that for the maintenance of LED lights, the Surya Roshani Company was appointed by the E.E.S.L. Company. It is also not in dispute that the son of the complainant got electrocuted because of short circuit in the LED lights. In the facts of the case, it would be apposite to examine the contents of Section 304(A) of the IPC which reads as under:-

"304A. Causing death by negligence: - 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."

8.1 This Court, in the judgment rendered in the case of Madhavji (supra), after threadbare analysis of Sections 304 and 304(A) of the IPC has observed thus:-

"12. The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC and covers those cases where death has been caused without 'intention' or 'knowledge'. The words 'not amounting to culpable homicide' in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another

person.

13. Thus, there is a fine distinction between Section 304 and Section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death."

8.2 This Court, after observing the provision of Section 304 of the IPC has held that the negligence and rashness to be punishable in terms of Section 304(A) of the IPC must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304(A) of the IPC discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor. The Court has observed that in a prosecution for an offence under Section 304A of the IPC, the Court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act, and that act was the proximate and efficient cause of the death without the intervention of others' negligence. This Court, in Paragraph No.41 has observed thus:-

"41. Mere negligence or rashness is, therefore, not enough to bring a case within the ambit of Section 304A I. P. C. Negligence or rashness proved by evidence must be such as should necessarily carry with it a criminal liability. Whether such liability is present may depend on the degree of culpability having regard in each case to the particular time, place and circumstances. If it is merely a case of compensation or reparation for injury or damage caused to a person or property, it is clearly not punishable under either of the sections. The culpability to be criminal should be such as concerns not merely the person injured or property damaged but the safety of the public on the road. But the nature and extent of the injury or damage will be irrelevant in fixing criminal liability for negligence under the sections."

8.3 In present case, it is not in dispute that the present applicant is a Deputy General Manager and it can be said that he is not directly responsible for the incident since, as observed herein above, there were two sub-contractors, who had undertaken the work of installation of the LED lights. The accident had occurred because of short circuit in the LED street light. It is also not in dispute that as per the agreement between the Bavla Nagarpalika and E.E.S.L. Company

Ltd. more particularly, Clause 5 (vii), it was agreed upon that Urban Local Body i.e. Nagarpalika had to carry out necessary rectification works to the existing street lighting system, wherever necessary including those related to replacement of cable/terminations, switches, meters, fixtures, arms, poles, etc. The work of replacing of old lights with LED lights of the Company was already over as on 21.5.2017 and as narrated in the FIR as well as in the report, on the date of incident, the street light was already replaced by the LED lights and the incident had occurred because of S.P.D. short circuit.

8.4 The conspectus of aforesaid facts would reveal that it was an unfortunate accident which led electrocution of the son of the complainant and the applicant being a Deputy General Manager, in fact, cannot be held directly attributed to rash and negligent act which led to such an accident in wake of the fact that the contract of installing the LED lights was further passed over to two other contractors. As per the clause of the agreement, it was a duty of the Urban Local Body to ensure that after the street lights are replaced, necessary rectification work has been carried out by the said Urban Local Body. Be that as it may, it is not in dispute that the E.E.S.L. Company has given its contract to one Surya Roshani Company, who in turn, had further given the said contract to one Chatur Electric, Ajmer, Rajasthan for replacing the street light. Thus, the ingredients of section 304-A of the IPC are not established in the present case against the applicant since he cannot be held directly attributable for rash or negligent act.

9.0 In view of the facts of the case and foregoing observations, the F.I.R. being C.R.No.I-99 of 2017 registered with Bavla Police Station, Ahmedabad (Rural) for the offences punishable under sections 304(A) and 114 of the IPC as well as all other consequential proceedings arising from the F.I.R. are hereby quashed and set aside qua the present applicant. RULE is made absolute. Direct service is permitted.