
(2014) 04 MAD CK 0181

In the Madras High Court

Case No : Criminal Original Petition No. 7138 of 2014

K.P. Ramaswamy

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 08-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 304(ii)

Citation : (2014) 2 LW(Cri) 337

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Judgement

P. Devadass, J.—Petition for anticipatory bail. Offence alleged are under Section 304(ii) and 337 of IPC.

2. According to Mr. V. Gopinath, learned Senior Counsel appearing for the petitioner/A-4, in the unfortunate incident that took place inside the petitioner's factory, 7 persons have lost their lives and 11 persons were subjected to occupational hazards. However, besides the Factory Manager, Personnel Officer, Plant Supervisor, petitioner, who is the Chairman of the company also has been implicated.

3. The learned Senior Counsel further contended that even taking the allegations as such projected by the prosecution an offence under Section 304(ii) IPC is not attracted as against the petitioner. The essential ingredients for an offence under Section 304(ii) IPC are guilty mind (knowledge) and overt act on the part of the petitioner. To apply Section 304(ii) IPC as against a person the foremost requirement is an act committed as against a person the foremost that has contributed/responsible for the death. However, in this case, committed any act which was responsible for the incident inside the factory. Petitioner is residing in Coimbatore. He cannot be held to have committed an act with requisite knowledge that it is likely to cause the death of the employees.

4. In support of his submissions The learned senior counsel cited the following

decisions.

"1) Keshub Mahindra Vs. State of M.P.,

2) Mahadev Prasad Khashik v. State of U.P. and another (2009 (2) SCC CrI 834)

3) Dr. Jeppiar and Another Vs. State of Tamil Nadu and Bija Madali,

5. The learned Senior counsel further contended that looking from any angle, there is no prima facie case as against the petitioner. Now, the investigation officer also recorded statement of the witnesses, collected postmortem certificates, medical certificates, inspection report of authorities under the Factories Act and the Tamil Nadu Pollution Control Board, Petitioner cannot interfere with the investigation. He is ready to co-operate with the investigation officer. So far he has not been involved in any criminal case. He has no bad antecedents. He is aged about 65 years he has no bad antecedents. He has permanent residence. He is a businessman he has roots in society. He will not evade/flee away from justice.

6. The learned senior counsel further submitted that the petitioner as an employer has taken immediate steps for providing relief to the affected families. Rs. 13 lakhs has been paid for each bereaved family. Employees who have suffered in this industrial accidents also have been treated in a private hospital at the cost of the petitioner. The Government also announced them ex gratia payment.

7. On the other the learned State Public Prosecutor submitted that inside the factory, in a tank, toxic gas has been stored. There was leakage in the connecting pump inside the tank. An employee went inside to repair the pump. Due to the effect of the toxic gas 7 persons died. 11 persons injured. Petitioner is the owner of the factory. He did not take any precautionary measures ensuring their safety. Further, there was no proper training to the employee son how to escape when such a grim situation arise. Petitioner know that in view of not taking the precautionary measures death will occur. So there is prima facie case for an offence under section 304(ii) IPC as against the petitioner also. Further, petitioner's custodial interrogation is needed to verify certain measures relating to factories act. 1948 and 1987 Chemical accidents (Emergency Planning Liability Insurance Act 1991, Public Liability Insurance Act 1992 and the Control of Major industrial Accident Hazard Rules 1993 the learned Public Prosecutor also submitted that in his inspection report the competent authority under the Factories Act, has stated that the petitioner is also responsible for the incident.

8. In reply, the learned senior counsel appearing for the petitioner submitted that the petitioner is entitled to go in appeal to the next authority as against the adverse order passed by the statutory authorities. Petitioner is ready to co-operate with the investigation officer. He is ready to produce documents, ledgers, etc., if any called for by the investigation officer. In the facts and circumstances, his custodial interrogation not necessary except to harass him.

9. I have anxiously considered the submissions of the learned Senior counsel for the petitioner, learned senior counsel for the state (public prosecutor), perused the averments in the anticipatory bail petition counter filed by the investigation Officer, Case Diary and the decisions cited.

10. Petitioner A4 is Chairman of KPR Textile Co. Ltd. situate in SIPCOT complex; perundurai. Erode District. It employs several persons. It is a textile processing unit. On 18.3.2014, at about 10.30 a.m. inside the factory a great tragedy took place.

11. A pump in the ETP Tank in which water is processed got repaired. Using a ladder, mechanic Ananthakumar stepped into the tank to repair the pump. No information about him. Like him one by one who went inside the tank to repair the pump. No information about him. He sw swooned. Like him one by one who went inside the tank also swooned. 7 persons died inhaling the toxic gas released through the leakage in the pump. 11 employees also got affected. They were treated in a hospital.

12. Suresh, an employee lodged the complaint. A case for offences under section 304(ii) and 337 IPC has been registered. Factory Manager, Personnel Officer and the ETP tank incharge were made A1 to A3. Chairman of the company, the petitioner herein also has been added as A-4.

13. A-1 to A-3 were stated to have directly engaged in the manufacturing process carried out in the unit. They are occupying various positions in the factory. The factory unit is in Perundurai. Chairman of the company (A-4) is staying in Coimbatore.

14. It has been strenuously contended by the learned Senior Counsel appearing for the petitioner that there is no prima facie case against the petitioner for an offence under Section 304(ii) IPC.

15. However, the learned state public prosecutor contended that at the owner of the company, petitioner is duty bound to take precautionary measures to avoid such kind of untoward incident by imparting necessary training to the employees, but, he did not do so. Thus he has committed culpable homicide not amounting to murder.

16. In the Indian Penal Code 1860, in Chapter XVI dealing with offences affecting life, in section 299 IPC, culpable homicide has been put as under:--

"299. Culpable Homicide:- Whoever 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."

17. Section 304 I.P.C. 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 it 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 cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

18. A crime generally consists of a guilty mind (mens rea) and execution of such evil mind by doing an act (overt act). Thus, mere guilty mind alone will not become an offence. Killing a person with requisite intention killing a person is likely to cause his death are essential requirements/ingredients for culpable homicide. (See section 299 I.P.C.) There is mens rea and also "overtact".

19. Under certain circumstances as stated in Section 300 IPC, causing death will be murder. It is culpable homicide amounting "to murder". It is punishable under Section 302 IPC. In section 300 IPC under certain circumstances, "culpable homicide will not amount to murder". It is punishable under section 304 IPC. If it is done with intention higher punishment is provided in Part I of Section 304 IPC. And if it is done with knowledge but without intention, a lesser punishment in part-II of Section 304 IPC.

20. A close reading of Sections 299 and 300 IPC, and Section 304 part-I or Part II IPC, would show that they require commission of an act on the part of the accused. Without committing an act, section 304 IPC will not come to play. These are basic principles governing the criminal liability for offences affecting human life governing the criminal liability for offences affecting human life prescribed in Sections 299, 300, 302, 304 either part I or part II.

21. A division Bench of the Calcutta High Court in Adam Ali Taluqdar and Others Vs. King-Emperor, , referring to Section 304(ii) Section 34 IPC observed as under:--

"Although to constitute an offence under Section 304, Part 2 there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. Each of the assailants may know that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act and therefore Section 34 can apply to a case Section 304, part 2.."

22. In Keshub Mahindra Vs. State of M.P., on the night between 2.12.84 and 3.12.1984, there was leakage of toxic gas known MIC from the Union Carbide Company's Unit situate in Bhopal and the Bhopal gas disaster took place. Thousands and thousands of innocent persons and animals have lost their lives. Many got maimed. After investigation police filed final report for offences under Section 304(ii), 326, 324, 429 r/w 35 PC as against certain officials of the

company who were directly involved in the day today operation of the company's unit in Bhopal and also against A-2 namely Keshub Mahindra/Managing Director, who was residing in Bombay. Ultimately, A-2 questioned the framing of charge under Section 304(ii) IPC as against him on the ground that there was no commission of any act by him which has caused the death of the Bhopal gas victims.

23. In the said Bhopal Gas tragedy case, the Hon'ble Apex Court observed as under:--

"20. It, therefore, becomes necessary for us now to address ourselves on this moot question. As noted earlier the main charge framed against all these accused is under section 304 part II, IPC. So far accused Nos. 2, 3, 4 and 15 are concerned they are also charged with offences under Sections 326, 324 IPC and 429 IPC read with Section 35 IPC while accused 5 to 9 are charged substantially with these offences also. We shall first deal with the charges framed against the concerned accused under the main provisions of Section 304 part II IPC. A look at section 304 part II IPC. A look at section 304 part II shows that the concerned accused can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged if it is alleged that the act of the concerned accused 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 the charged offences would fall under Section 304 Part II However, before any charge under Section 304 Part II can be framed, the material on record must at least prima facie show that the accused is guilty of committed homicide and the act allegedly committed by him must amount to culpable homicide. However, if the material relied upon for framing such a charge against the concerned accused falls short of even prima facie indicating the accused appeared to be guilty of an offence of culpable homicide Section 304 Part I or Part II would get out of the picture. In this connection we have to keep in view section 299 of the Indian Penal Code which defines culpable homicide. It lays down that whoever 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 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." Consequently the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least prima facie indicate that the accused had done an act which had caused death at least with much knowledge that he was by such as likely to cause death. The entire material which the prosecution relied upon before the trial court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates prima facie that on the fateful night when the plant was run at Bhopal it was run by the concerned accused with the knowledge that such running of the plant was likely to cause deaths of human beings. It cannot be disputed that mere act of running a plant as per the permission granted by the authorities would not be a

criminal act. Even assuming that it was a defective plant and it was dealing with a very toxic and hazardous substance like MIC the mere act of storing such a material by the accused in Tank No. 610 could not even prime facie suggest that the concerned accused thereby had knowledge that they were likely to cause death of human beings. In fairness to prosecution it was not suggested and could not be suggested that the accused had an intention to kill any human being while operating the plant. Similarly on the aforesaid material placed on record it could not be even prime facie suggested by the prosecution that any of the accused had a knowledge that by operating the plant on that fateful night whereat such dangerous and highly volatile substance like MIC was stored they had the knowledge that by this very act itself they were likely to cause death of any human being."

24. In *Mahadev Prasad Khashik v. State of U.P. and another* (2009 (2) SCC (Crl.) 834) the complainant brought his father Bhudda Ram to the accused, a doctor for treatment, The accused administered him injections. After half an hour he died. On the complaint of his son, the doctor has been prosecuted for an offence under Section 304(ii) IPC also. The Hon'ble Apex Court holding that the doctor neither had intention or knowledge that his act would result or likely to cause death of the patient, thus section 304 IPC is not warranted as against the doctor.

25. In *Mahadev Prasad Khashik* (supra), with reference to Section 304 IPC the Hon'ble Apex Court observed as under:--

"Plain reading of the above section (section 304 I.P.C.) 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. The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with 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."

21. The Makers of the Code observed;

"The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed.

The Makers further stated;

It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind" They can be ascertained only from external and visible acts. Observation and experience

enable us to judge the connection between men's conduct and their intentions. We know that a sane man does not usually commit such acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion."

22. Before Section 304 can be invoked, the following ingredients must be satisfied;

"(i) the death of the person must have been caused;

(ii) such death must have been caused by the act of the accused by causing bodily injury;

(iii) there must be an intention on the part of the accused

(a) To cause death; or

(b) To cause such bodily injury which is likely to cause death; (Part I) or

(iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II)."

24. There is thus 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 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.

27. The learned counsel for the appellant-accused submitted that by no stretch of imagination can it be said that the appellant while administering injections to deceased Buddha Ram said to have committed an offence punishable under Section 304 IPC. It can never be said that the death of Buddha Ram had been caused by the appellant by doing the act of giving injections with intention to cause his death or to cause such bodily injury and is likely to cause death. Likewise, it is impossible to think that the purported act had been done by the appellant accused with the knowledge that in all probability, it would result into the death of Buddha Ram."

26. In *Dr. Jeppiar and Another Vs. State of Tamil Nadu and Bija Madali*, in connection with a college function, a trust was constructing a big arch. It fell down, seven workers died. Several workers sustained injuries. The trustees has been proceeded with also for an offence under Section 304(ii) IPC. A learned single Judge of this Court taking note of the fact that the trustee, who has not personally participated in the construction activity cannot be imputed with the

knowledge to cause the death of the workers and thus, as against the trustee Section 304(ii) IPC is not attracted.

27. From a reading of the provisions of Section 299, 304 Part II IPC what emerges is that for the offence of "culpable homicide not amounting to murder" the most important aspect is commission of an act by the accused to cause the death of a person and the question of intention or knowledge and that will decide the case falling either under Part-I or Part-II of 304 IPC.

28. Now, in the case before us, petitioner/A4 is the Chairman of the company running the proceeding Unit in Perundurai. Petitioner is residing in Coimbatore. Even as per the prosecution version, he is not involved in the day to day operation of the unit in Perundurai. Petitioner has been implicated because he is the Chairman of the company. Even as per the prosecution version no act resulting in the death of the employees has been directly and personally attributed to the petitioner. The version of the prosecution that the petitioner, as a Chairman of the company had not taken any precautionary measure, such as proper training to the employees as to how to safeguard themselves when such a mishap occurred will not be overt act for the purpose of Section 304(ii) r/w 299 IPC. Thus, so far as the petitioner is concerned, an important element for an offence under Section 304(ii) IPC is lacking.

29. As rightly submitted by the learned Senior Counsel appearing for the petitioner that the views expressed by the competent authority under the Factories Act are subject to appeal.

30. Petitioner is a Chairman of the company. He is a businessman. He has fixed place of residence. He has no bad antecedents. It is also pertinent to note that each bereaved family has been paid Rs. 13 lakhs as compensation by the petitioner. Further, the entire medical expenses of other employees, who took treatment in the private hospital also has been paid by petitioner. These aspects are not disputed by the prosecution. Petitioner is ready to cooperate with the investigation officer. In the facts and circumstances, his custodial interrogation is not necessary. An offence under section 337 I.P.C. is bailable.

31. Thus, there is prima facie case in favour of the petitioner.

32. The said view had been taken at the present stage of the case for the limited purpose or deciding the plea of the petitioner for anticipatory bail. (See C.B.I. and Others Vs. Keshub Mahindra etc. etc., .

33. Considering all the above aspects, I am inclined to grant him pre-arrest bail. Ordered as under:--

"(i) Anticipatory bail granted to the petitioner.

(ii) Petitioner shall surrender before the learned Judicial Magistrate Perundurai, within 15 days of receipt of a copy of this order;

(iii) Petitioner shall execute a bond for Rs. 1,00,000/- (Rupees one lakh only)

with two sureties each for a like sum to the satisfaction of the said Magistrate;

(iv) Petitioner shall report before the respondent police on every Monday and Friday at 10.30 a.m., until further orders.:"