

(2014) 04 MAD CK 0256
In the Madras High Court
Case No : Crl. O.P. No. 9136 of 2014

Ranganathan, Ramanan and Nagendran	APPELLANT
Vs	
The State of Tamilnadu	RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

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

Citation : (2014) 04 MAD CK 0256

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Judgement

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

2. According to the learned counsel for the petitioners, a tragedy took place inside the factory, 7 persons have lost their lives and 11 persons sustained injuries. Petitioners are Factory Manager, Personnel Officer and ETP Plant Incharge respectively.

3. Learned counsel for the petitioners further contended that even taking the allegations as such an offence u/s 304(ii) IPC is not attracted as against the petitioners. The essential ingredients for an offence u/s 304(ii) IPC are guilty mind (knowledge) and overt act on the part of the petitioners. To apply Section 304(ii) IPC as against a person the foremost requirement is an act committed by the accused. It must be an act that has contributed/responsible for the death. However, in this case, except the petitioners being the staff of the company they have not committed any act which has connection with the deaths inside the factory. Petitioners 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 counsel for the petitioners cited the following decisions.

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

- 2) Mahadev Prasad Kaushik Vs. State of U.P. and Another,
- 3) Dr. Jeppiar and Another Vs. State of Tamil Nadu and Bija Madali, .
- 4) Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra, .
- 5) Ambalal D. Bhatt Vs. The State of Gujarat, .
- 6) B.P. Ram and Another Vs. State of Madhya Pradesh, .

5. The learned counsel for the petitioners further contended that looking from any angle, there is no prima facie case as against the petitioners. Now, the investigation officer also recorded the statement of the witnesses, collected postmortem certificates, medical certificates, inspection reports of authorities under the Factories Act and the Tamil Nadu Pollution Control Board. Petitioners cannot interfere with the investigation. Petitioners are ready to co-operate with the investigation officer. So far they have not been involved in any criminal case. They have no bad antecedents. They have their permanent residence. They have roots in society. They will not evade/flee away from justice.

6. Learned counsel for the petitioners further submitted that immediately the Management provided relief to the affected families. Rs. 13 lakhs has been paid for each bereaved family. Employees who have sustained injuries also have been treated in a private hospital at the cost of the management. Government also announced them ex gratia payments.

7. On the other hand, the learned 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 valve in the pump. Due to the inhaling of the toxic gas 7 persons died. 11 persons injured. Petitioners are officers working in the factory. They did not take precautionary measures ensuring the safety of the workers. Further, there was no proper training to the employees on how to escape when such a situation arises. Petitioners knew that because of not providing such precautionary measures death will take place. There is prima facie case for an offence u/s 304(ii) IPC as against the petitioners also. In his inspection report the authority under the Factories Act, has also stated that there was no proper precautionary measures inside the factory.

8. I have anxiously considered the submissions of the learned counsel for the petitioners, learned Public Prosecutor, perused the averments in the bail petition and the decisions cited.

9. "KPR Textile Processing Co. Ltd". is situate in SIPCOT complex in Perundurai in 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.

10. 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. He swooned. Like him those who went inside the tank

also swooned. 7 persons died inhaling the toxic gas released through the leakage in the pump. 11 employees got injured. They were treated in a hospital.

11. Suresh, an employee of the said factory lodged the complaint. A case for offences u/s 304(ii) and 337 IPC has been registered. Factory Manager, Personnel Officer and ETP Tank incharge were made as A1 to A3. A-1 to A-3 are working in the factory. They are occupying various supervisory positions in the factory.

12. It has been strenuously contended by the learned counsel appearing for the petitioners that there is no prima facie case as against the petitioners for an offence u/s 304(ii) IPC.

13. However, the learned Public Prosecutor contended that petitioners are duty bound to take precautionary measures to avoid such kind of untoward incident by imparting necessary training to the employees, but, they did not do so. Thus, they have committed culpable homicide not amounting to murder.

14. 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.

15. 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 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.

16. A crime generally consists of guilty mind (mens rea) and execution of such evil mind by doing an act overt act). Thus, mere guilty mind alone will not an offence. Killing a person with requisite intention, killing a person with intention to cause such bodily injury as is likely to cause his death or with such knowledge that it 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".

17. Under certain circumstances, as stated in Section 300 IPC, causing death will be murder. It is "culpable homicide amounting to murder". It is punishable u/s 302 I.P.C. In section 300 IPC, under certain circumstances, "culpable homicide will not amount to murder". It is punishable u/s 304 IPC. If it is done with

"intention" higher punishment is provided in part I of section 304 IPC. and if the act is done "with knowledge but without intention", a lesser punishment is provided in part-II of 304 IPC.

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

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

Although to constitute an offence u/s 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 the act, they are jointly doing, is one 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 u/s 304, Part, 2.

20. In Keshub Mahindra Vs. State of M.P., on the night between 2.12.1984 and 3.12.1984, there was leakage of toxic gas MIC from the Union Carbide Company's Unit in Bhopal. Bhopal gas disaster took place. Thousands and thousands of innocent people and animals have lost their lives. Many got maimed. After investigation, police filed final report for offences u/s 304(ii), 326, 324, 429 r/w 35 IPC as against certain officials 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 u/s 304(ii) IPC as against him. The Hon''ble Apex Court quashed the charge u/s 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.

21. In the Bhopal Gas Tragedy case (supra), 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 u/s 304 Part II, IPC. So far as 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 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 u/s 304 Part II. However, before any charge u/s 304 Part II can be framed, the material on record must at least prima facie show that the accused is guilty of culpable 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 that 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 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 u/s 304 Part II must at least prima facie indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act 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 that 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 prima 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 prima 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.

22. In Mahadev Prasad Kaushik Vs. State of U.P. and Another, , the complainant brought his father Bhudda Ram to the accused, a doctor for treatment. The accused administered him injections. After half an hour the patient died. On the complaint of his son, the doctor was prosecuted for an offence u/s 304(ii) IPC also. The Hon"ble Apex Court holding that the doctor had neither intention nor 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.

23. 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 such bodily injury as is likely 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 certain 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).

23. 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 u/s 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.

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 u/s 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 as is likely to cause death. Likewise, it is impossible to think that the purported act has been done by the appellant-accused with the knowledge that in all probability, it would result into the death of Buddha Ram.

24. 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 trustee has been proceeded with also for an offence u/s 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..

25. *Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra*, , *Ambalal D. Bhatt Vs. The State of Gujarat*, And *B.P. Ram and Another Vs. State of Madhya Pradesh*, relates to rash and negligent act coming u/s 304A I.P.C. The question before us is whether the petitioners have committed culpable homicide not amounting to murder coming u/s 304(ii) I.P.C. Therefore, these decisions are not germane to the issue before us.

26. From a reading of the provisions of Section 299, 304 Part II IPC what emerges is that for an 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 it will clinch the issue whether it falls under part-I or part-II of 304 IPC.

27. Petitioners are A-1 to A-3. They are supervisory staff working in the Processing Unit of the company in Perundurai. Even as per the prosecution version no act resulting in the death of the employees could be directly and personally attributable to the petitioners. The version of the prosecution that the petitioners as supervisory staff had not taken any precautionary measure, such as proper training to the employees as to how to safeguard themselves when such a mishap occurs will not be overt act for the purpose of Section 304(ii) r/

w 299 IPC. Thus, so far as the petitioners are concerned, an important element for an offence u/s 304(ii) IPC is lacking.

28. As rightly submitted by the learned counsel appearing for the petitioners that the views expressed by the competent authority under the Factories Act is subject to appeal.

29. Petitioners are staff of the company. They are in jail since 18.3.2014. They have fixed place of residence. They have no bad antecedents. Each bereaved family has been paid Rs. 13 lakhs as compensation by the company management. The medical expenses of the injured workers has been paid by the company management. These aspects are not disputed by the prosecution also. Petitioners are ready to cooperate with the investigation officer. Offence u/s 337 I.P.C. is bailable.

30. Thus, there is prima facie case in favour of the petitioners.

31 This view has been taken in this bail petition at the present stage of the case for the limited purpose of deciding the petitioners' plea for bail. (see C.B.I. and Others Vs. Keshub Mahindra etc. etc.,).

32. Considering all the above aspects, I am inclined to grant them bail.

(i) Bail granted to the petitioners.

(ii) Petitioners 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 learned Judicial Magistrate, Perundurai.

(iii) Petitioners shall report before the respondent police daily at 10.30 a.m., until further orders.