

(2012) 01 MAD CK 0017

In the Madras High Court

Case No : Criminal O.P. No. 22896 of 2008 and M.P. No. 1 of 2008

S. Varadhan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 279, 285, 304A, 338

Citation : (2012) MLJ(Cri) 585

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : Y.N. Venkataraj for G. Rajesh, for the Appellant; C. Emalias, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

M. Sathyanarayanan, J.—The petitioners are arrayed as A-2 to A-4 and they have filed the present petition to quash the proceedings in

C.C. No. 73 of 2008 pending on the file of the Judicial Magistrate No. 1, Ponneri. As per the charge sheet/final report filed by the respondent, on

26.5.2007, at about 18, 15 hours, near Tatchur Cross Road, GNT Road, A-1 was driving the lorry bearing Regn. No. TSI 8600 loaded with iron

powder from Gummidipoondi to Chennai in a rash and negligent manner. At that time, A-2 to A-4, the officials of the Commercial Taxes

Department, were on duty for the purpose of supervising the movement of vehicles at Karanodai near Toll Gate, to verify the number of vehicles

and also the records. A-2 suddenly came and directed the driver of lorry - TSI 8600 to halt the vehicle and A-3 blew the whistle and A-4 showed

his hand to halt the vehicle. A-1, the driver of the lorry, on seeing the same, suddenly halted the lorry. On account of the sudden halting of the lorry,

the TATA Sumo Car bearing Regn. No. TN-04-E-4318, which was coming behind the said lorry, hit the lorry on the rear side and, consequently,

some of the occupants of the car, namely, Srinivasan and Neelambal, died on account of the injuries sustained on their head and one more

occupant died on the way to the hospital and the driver of the car, inspite of treatment given, could not survive and died. Four other occupants also

sustained grievous injuries. The 2nd respondent, after investigation, has filed the charge sheet against A-1 to A-4 for the commission of offences

under Sections 279, 338 (6 counts) and 304A IPC (4 counts) and challenging the vires of the proceedings, A-2 to A-4 had filed this petition.

2. Learned counsel appearing for the petitioners submits that the petitioners were deputed by the proceedings of the Deputy Commissioner (CT)

Chennai Enforcement Wing -I, Chennai dated 23.5.2007 to supervise the movement of vehicles at Karanodai near Toll Gate to verify the number

of vehicles as well as verification of records and were directed to collect the bills from the transporters in respect of evasion prone commodities,

namely, iron and steel bills, granite and ceramic tile bills, tax evasion, if any, identified in the bills, bill trading cases, if noticed, and any other

suspicious cases with special remarks and in pursuant to, the direction of their superior official, they were on duty near the Toll Gate at Karanodai.

The learned counsel appearing for the petitioners further submits that as per the abovesaid proceedings of the superior official, the petitioners, in

the course of official duty, signaled the lorry bearing Regn. No. TSI 8600 to halt for verification and the driver of the lorry stopped the vehicle and

the TATA Sumo car, which was closely following the said lorry, dashed on the rear side of the lorry and, consequently, resulted in death of some

of the occupants and injuries to other occupants and the happening of the said accident cannot be attributed to the acts of the petitioners. It is

further submitted by the learned counsel for the petitioners that since the petitioners were on official duty, the respondent, before filing the charge

sheet should have obtained sanction from the competent authority u/s 197 Cr.P.C. and since the said sanction order, admittedly, has not, been

obtained, they cannot be charge sheeted and, hence, for the said reasons, prayed for the quashment of the proceedings.

3. Per contra, learned Government Advocate (Crl. Side) submits that since signals were given by A-2 and A-3, the lorry was suddenly stopped

and the TATA Sumo, which was closely following the lorry, dashed against the rear side of the lorry and, consequently, some of the occupants

died and some of the other occupants sustained grievous injuries. The lorry would not have been halted but for the signal given by petitioners/A-2

to A-4 and as a result of which the TATA Sumo, which was closely following the lorry, dashed against it, which resulted in the death and grievous

injuries to the occupants. Therefore, the proximate cause of the accident was due to the signals given by A-2 to A-4 to halt the vehicle. It is the

further submission of the learned Government Advocate (Crl. Side) that insofar as sanction u/s 197 Cr.P.C. is concerned, the said requirement

could be adjudicated even at the fag end of the trial on the basis of the oral and documentary evidence and, therefore, the charge sheet Tiled by the

respondent is in order and, hence, prayed for the dismissal of this petition.

4. This Court has carefully considered the rival submissions and also perused the typed set of documents.

5. A perusal of the typed set of documents would disclose that the Deputy Commissioner (CT), Chennai Enforcement Wing - I, Chennai, vide

proceedings No. B1/900/2007 dated 23.5.2007, deputed A-2 and other officials to check the vehicles beyond the check post for verification of

records and collect bills from the transporters in respect of all evasion prone commodities. In pursuant to the said proceedings, which had been

issued by the superior official, A-2, aided and assisted by A-3 and A-4, were on duty on 26.5.2007, between 8.00 a.m. and 8.00 p.m.

6. The abovesaid proceedings was issued by the superior official to A-2 to A-4 in the course of discharge of his duties and since the said

document is an unimpeachable one, this Court is entitled to take notice of the contents of the same.

7. A perusal of the FIR in Crime No. 100 of 2007 registered by the respondent on 26.5.2007, as well as the sketch would disclose that the

TATA Sumo car was closely following the lorry bearing Regn. No. TSI 8600 and since the vehicle was directed to be stopped, it halted and the

abovesaid car, which was closely following the lorry, dashed against the rear side of the lorry, which resulted in the death of some of the occupants

of the car and also grievous injury to the other occupants.

8. A scope of Section 304A IPC came up for consideration in a number of

decisions and it is useful to refer to some of the decisions.

9. In *Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra*, the appellant/accused was prosecuted for the commission of the offence

u/s 304A and 285 IPC on the ground that while doing the process of pouring turpentine, the froth overflowed out of the barrel and because of

heat, varnish and turpentine, which was stored at a short distance caught fire and, consequently, 7 workers were burnt to death. Before the

Hon''ble Supreme Court, it was contended by the appellant/accused that since he was not present when the fire broke out resulting in the death of

7 workmen by burning, he cannot be attributed with any rash and negligent act. The Hon''ble Supreme Court, on consideration of the materials

available on record, found that the direct or proximate cause of fire, which had resulted in seven deaths, was that of one Hatim Tasduq, who was

looking after the operation. The Hon''ble Supreme Court also taken into consideration the decision of the Bombay High Court in *Emperor v.*

Omkar Rampratap (4 Bom LR 679), wherein Section 304A IPC was interpreted and observed as follows:

To impose criminal liability u/s 304A, Indian Penal Code, it is necessary that the death should have been the direct re-suit of a rash and negligent

act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa

causans; it is not enough that it may have been the cause sine qua non.

The Hon''ble Supreme Court found that in order to bring home the guilt on the person for the commission of the offence u/s 304A, the rash or

negligent act should be the direct or proximate cause of death and on the facts of the case, found that it was the act of Hatim Tasduq, which

resulted in the consequential death of the 7 workmen and, therefore, allowed the appeal and acquitted the appellant/accused therein.

10. The Hon''ble Supreme Court in its subsequent decision in *Suleman Rehiman Mulani and Another Vs. State of Maharashtra*, referred to and

followed the decisions in *Emperor v. Omkar Rampratap* (supra) and *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra* (supra)

and other decisions and reiterated the legal position that what Section 304A IPC requires is causing of death by doing any rash or negligent act and

this means that death must be the direct or proximate result of the rash or

negligent act.

11. The said view has once again been reiterated, in the subsequent decision of the Hon'ble Supreme Court in *Ambalal D. Bhatt Vs. The State of Gujarat*, .

12. In *Satya Prakash v. State of Rajasthan* (1986) CrL. L.J. 542, the facts of the case are that the appellant/accused was driving a motorcycle with

the deceased sitting on the rear side and a bus was proceeding ahead of his vehicle. The bus struck an electric pole and, consequently, the wire got

snapped and on seeing the same, the appellant/accused avoided it by bowing down his neck, but the deceased, who was in the rear side, having

not watched it, the live wire struck him and, consequently, he died. The appellant/accused was charged for the offence u/s 304A and the trial

Court convicted him to undergo 10 months rigorous imprisonment together with a fine of Rs. 1,000/- with a default sentence. Challenging the vires

of the same, he preferred a revision before the Rajasthan High Court. In the said decision, the Rajasthan High Court has taken into consideration

the decision rendered in *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra* (supra) and held as follows:

12. A person can be held guilty of causing death by doing any rash or negligent act, if he had the knowledge that he was doing an act which was

likely to cause injury to some other person. In this case, the petitioner did not strike the electric pole. It was on account of the accident by the bus,

as there is no material on the record to say that it was not due to rashness and negligence of the driver of the bus. But the fact is that the bus had

struck against the pole, and on account of that, electric wire had fallen down on the road. So, the death of Sohanlal was not a direct act of the

petitioner, but it was the direct act of the driver who was driving the bus, which was going ahead the vehicle of the petitioner. On account of the act

of the driver of the bus, might be negligent or bona fide. Sohanlal died, and for that act, the petitioner cannot be blamed. A person can be held

guilty for such a criminal offence, if it is established that the act of that person was reckless or that it was in direct consequence of his own act.

Here, the consequence was not on account of the act of the petitioner. The electric pole did not fall on account of act of the petitioner. The electric

wire which had struck the neck of Sohanlal being broken down on the road, was

not on account of the act of the petitioner, and it cannot be said that the death of Sohanlal was in consequence to the act of the petitioner. So, before punishing a person for the offence of causing someone's death by negligence, one has to prove that it was the criminal negligence of the accused. It is to be proved that it was the direct consequence of the act, which was rash and negligent act. But, in the present case, I find that there is nothing on the record to prove that it was the direct consequence to the act of the petitioner. On the other hand, it is proved that the death of Sohanlal by electric-current was on account of the direct act of the driver of the bus, which was going ahead the motorcycle of the petitioner. For that act, the petitioner cannot be held guilty.

13. The petitioners/A-2 to A-4 were charged for the commission of the offences under Sections 279, 338 and 304A IPC and it is relevant to

extract the said provisions:

279. Rash driving or riding on a public way:

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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.

338. Causing grievous hurt by act endangering life or personal safety of others:

Whoever causes grievous hurt to any person to doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

14. Section 279 IPC speaks about rash driving or riding on a public highway and, admittedly, the petitioners herein did not drive any vehicle in a rash and negligent manner. Section 338 IPC speaks about causing grievous hurt

by act endangering life or personal safety or others and Section

304A IPC speaks about causing death by negligence. To constitute either the offence u/s 279 of 304A IPC, proof of rash and negligence is

essential and the result on account of rash or negligence, which included the injury or death must be the direct result of such act of the accused and

it must be proximate and efficient cause without intervention of other's negligence.

15. Admittedly, the petitioners herein, in pursuant to the direction of their superior official were discharging their duties and since they were

specifically directed to check the vehicles with regard to evasion of commercial tax, they halted the lorry bearing Regn. No. TSI 8600 and it was

halted and the TATA Sumo car, which was closely following the said lorry, dashed against the said lorry on the rear side and as a result of which

some of the occupants died and some of them sustained grievous injuries. The acts of A-2 to A-4, even as per the version of the prosecution,

cannot be said to be rash and negligent and assuming that it was rash and negligent act, cannot be said that it was proximate and efficient cause of

the death of the occupants of the TATA Sumo car.

16. A perusal of the statement of witnesses would also indicate that 9 persons were traveling in the ill-fated TATA Sumo car bearing Regn. No.

TN-04-E-4318 and the lorry bearing Regn. No/TSI 8600 was driven fast and the TATA Sumo car was following it and suddenly brakes were

applied due to which the TATA Sumo car dashed on the rear side of the lorry. Even the materials available on record, relied on by the prosecution

in the form of statement of witnesses and sketch, do not disclose that the petitioners were aware of the car coming behind the lorry. Therefore, it

cannot be said that their act of halting the vehicle is the proximate., and efficient cause for the death/injury to the occupants of the car.

17. The ratio laid down in the /above-cited decisions of the Hon'ble Supreme Court as well as the Rajasthan High Court would also disclose that

persons cannot be mulcted with criminal liability unless their acts is the immediate and proximate cause of rash and negligent act.

18. In the considered opinion of this Court, the continuance of the proceedings in C.C. No. 73 of 2008 insofar as the petitioners/A-2 to A-4

would definitely lead to miscarriage of justice and, therefore, the proceedings are

liable to be quashed.

19. In the result, the criminal original petition is allowed and the proceedings in C.C. No. 73 of 2008 pending on the file of Judicial Magistrate No.

1, Ponneri, insofar as the petitioners/A-2 to A-4 are quashed. Consequently, connected miscellaneous petition is closed. The findings/observations

made herein are only for the purpose of disposal of this petition and this Court has not touched upon the merits of the case projected by the

prosecution and the defence to be projected by A-1 and, hence, the trial Court need not be influenced by the same while deciding the case insofar

as A-1 is concerned.