
(2006) 09 MP CK 0045

In the Madhya Pradesh High Court

Case No : Criminal Revision No's. 1114, 1203 and 1204 of 2005

Smt. Indu Jain and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 228
Penal Code, 1860 (IPC) — Section 302, 304, 304(2), 323, 330
Prevention of Corruption Act, 1988 — Section 7

Citation : (2006) 09 MP CK 0045

Hon'ble Judges : Rakesh Saxena, J

Bench : Single Bench

Advocate : A. Usmani, in Cr. R. No. 1114, 1203 and 1204/2005, S.C. Datt and P.N. Verma, in Cr. R. No. 1203/2005 and G.S. Ahluwalia, in Cr. R. No. 1204/2005, for the Appellant; S.K. Kashyap, Dy. Govt. Advocate in Cr. R. Nos. 1114 and 1204/2005, for Non-applicant Nos. 1 and 2 in Cr. R. No. 1203/2005 and S.C. Datt and G.S. Ahluwalia, for Non-applicant Nos. 3 to 8 in Cr. R. No. 1114/2005, for the Respondent

Judgement

Rakesh Saxena, J.—Since all the three aforesaid revisions arise out of the one order, they are disposed of by this common order.

2. All the three aforesaid revisions arise of the order dated 28-7-2005 passed by the Sessions Judge, Bhopal, in Sessions Trial No. 212 of 2005 whereby charge u/s 304 Part-II of the IPC has been framed against the accused persons and they have been discharged of the offence u/s 330 of the IPC.

3. Criminal Revision No. 1114 of 2005 has been preferred by the complainant contending that the charge under Sections 330 and 302 of the IPC be framed against the accused persons.

4. Police Kohefiza filed the charge sheet against the accused persons, all officers of the SPE (Lokayukt), Bhopal, under Sections 330, 323/34 and 304(II) of the IPC.

5. In brief, the prosecution story is that on 14-7-2004 officers of SPE (Lokayukt), Bhopal, trapped and arrested Mr. R.K. Jain, Dy. Commissioner of Commercial Tax, Bhopal taking bribe of Rs. 2,000/- from V.K. Chhajed, Tax Consultant, and registered Crime No. 97 of 2004 u/s 7 of the Prevention of Corruption Act, 1988. The raid was headed by accused B.P. Singh and M.S. Nain. After finishing the trap proceeding at about 10.30 P.M., R.K. Jain was kept in custody of S. P. E. Bhopal in its office and Head Constable Badri Nihale, Constables Ramashish and Silvanush Tirki were posted on guard duty. On the same day, the house of R.K. Jain was also raided. In the morning of 15-7-2004, R.K. Jain fell down in the bath room and became unconscious. Concerned security personnel viz., Badri, Ramashish and Silvanush Tirki took him to Hamidiya Hospital where, during the treatment, around 1 P.M. he died. On the report lodged by the Station House Officer of Police Station, Kohefiza First Information Report u/s 330 of the IPC was registered. A written report to Police Kohefiza was also submitted by Akhilesh Jain, brother of the deceased, on 15-7-2004 at 11.15 A.M., according to which, accused persons had arrested Mr. R.K. Jain and had taken him to some unknown place wherefrom he was got admitted in the Hamidiya Hospital in serious condition. According to him, accused persons had tortured him due to which he died. After investigation, the police filed charge-sheet in the Court of Judicial Magistrate First Class, Bhopal for commission of the offences under Sections 304 Part-II, 330 and 323/34 of the IPC.

6. The case was committed to the Court of Session for trial. The Trial Court by the impugned order framed the charge against the accused persons u/s 304, Part-II of the IPC and discharged them from the offence u/s 330 of the IPC it also held that there was no material to frame charge u/s 302 of the IPC. Aggrieved by the impugned order, the complainant as well as accused both have preferred the revisions.

7. Learned Counsel for the accused/petitioners contended that there was no prima facie material for framing the charge u/s 304 Part-II or 302 of the IPC, at the worst, it could be a case u/s 323/34 of the IPC. Shri S.C. Datt, Senior Advocate and Shri G.S. Ahluwalia, advocate submitted that there was no medical evidence on record to prima facie show that the death of deceased was caused by any violent act of the accused persons. The cause of death was opined to be asphyxia. The injuries found on the body of deceased, when he was taken for the treatment, were only of simple nature, which were not the cause of death. The fractures of ribs of the deceased were opined to have occurred during his treatment in the hospital and had no connection with his death. It was also contended that there was no direct or circumstantial evidence that accused persons had caused any injury to him and that there was no purpose or motive also for them to have caused injuries to the deceased.

8. As against this, Shri S.K. Kashyap, Dy. Govt. Advocate, appearing for the State and Shri A. Usmani, learned Counsel for the complainant submitted that from the evidence adduced by the prosecution a prima facie case u/s 302 of the

IPC was made out. The deceased had suffered injuries while he was in the custody of accused persons, therefore, it was for the accused persons to explain as to how he suffered injuries, which could be done only at the time of trial.

9. I have heard the Counsel of both the sides at length and perused the case diary and the material on record.

10. The Court at the stage of framing charges is not expected to examine the evidence or material for the purpose of finding out whether the material placed before it warrants the conviction. The Court at this stage is only concerned with the question whether there is evidence or material to satisfy it prima facie that there are grounds for framing the charge. For that purpose the Court has to take into consideration the totality of the evidence alongwith the facts of the case.

11. In the case of State of M.P. Vs. S.B. Johari and Others, , the Apex Court observed:

...It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial. In Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , after considering the provisions of Sections 227 and 228, Cr.PC. Court posed a question whether at the stage of framing the charge, Trial Court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may pursue the records for that limited purpose, but it is not required to marshal with a view to decide the reliability thereof. The Court referred to earlier decisions in State of Bihar Vs. Ramesh Singh, , Union of India (UOI) Vs. Prafulla Kumar Samal and Another, and Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunia and Others, , and held thus:

From the above discussion it seems well settled that at the Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as

gospel truth even if it is opposed to common sense or the broad probabilities of the case.

12. The evidence of prosecution witnesses and the material on record show that there is absolutely no material on record to indicate that the injuries to the deceased were caused for extorting any confession or information or for seeking disclosure of any property from him. As such, the Trial Court rightly declined to frame charge for the offence u/s 330 of the IPC.

13. According to the written report lodged by Akhilesh Jain on 15-7-2004, on getting information that his brother viz., R.K. Jain had been trapped by the SPE (Lokayukt) party, he went to the Lokayukt Office where he came to know that the officers of the department had taken him to some unknown destination which he failed to locate whole of the night and it was only around 9.30 A.M. that he came to know that R.K. Jain was admitted in Hamidiya Hospital, Bhopal. When he alongwith other persons reached the hospital, he saw R.K. Jain lying on the strature in unconscious state. According to him, till the time he lodged the report he could not know as to who had brought Mr. Jain to hospital. In his police statement, which was recorded on 15-7-2004 he stated that his brother was tortured and mal-treated by the SPE Officers. In his second statement, which was recorded on 19-7-2004, he said that when he had seen R.K. Jain in the hospital and had come out and met with his brother Indrajeet, he informed him that he had met R.K. Jain in the Lokayukt Office and that R.K. Jain had informed that DSP Nain and other officials of Lokayukt had beaten him. After getting all this information he tendered a written report to the Police Kohefiza. However, the fact about his meeting with Indrajeet and gaining knowledge from him about the mal-treatment meted out to R.K. Jain at the hands of the lokayukt people was not disclosed by him in the aforesaid report.

14. Indrajeet Jain in his statement u/s 161 of the Cr.PC said that at about 8.30 P.M. he had gone to the office of Lokayukt and had found R.K. Jain sitting on a chair. By that time there was nothing abnormal with him. He had also requested Mr. Nain for releasing R.K. Jain on bail, but he was informed that it was not possible. Again he had gone to meet R.K. Jain at about 11.30 o'clock in the night alongwith Sales-tax Inspector C.B. Jain, but the police people had asked him to go out. However, at that time also his brother viz., R.K. Jain was all right. According to him, till 1.30 in the night he remained there and thereafter left for his house. Around 2.30 A.M. when his relatives Vikas Jain and Nilay came from Tikamgarh, he alongwith them again went to Lokayukt Office where he found Mr. R.K. Jain sitting on his bedding. According to him, R.K. Jain told him that Lokayukt Officials had tortured and beaten him and that he apprehended further harassment by them. By that time officials of Lokayukt Department again reached there and made them to go out and closed the channel gate of the door. In the morning, he was informed by the wife of R.K. Jain that he had fallen in the bathroom of Lokayukt Office and was got adnfitted in Hamidiya Hospital. Similar statement was given by witness Pradeep Bhadora and Nilay Satbhaiya.

15. Indu Jain, wife of deceased, in her statement before the police stated that on 14-7-2004 at about 3.30 P.M. the officers of Lokayukt Department had come to her house and had informed her that they had trapped her husband and then they had searched her house. According to her, around 12-12.30 o'clock in the night DSP Nain had come to her house and had remained for about one hour. Rest of raiding party worked there till 4.00 A.M. From the evidence of Indrajeet Jain and Indu Jain it appears that the raiding party had worked at the house of R.K. Jain till the late hours in the intervening night of 14-7-2004 and 15-7-2004 and that till 8 o'clock in the night R.K. Jain had not suffered any serious injury at the hands of accused persons. At that time when Indrajeet Jain met R.K. Jain, he had informed that Lokayukt officials had given him mental and physical torture. In this state of affairs there appears no material on record to prima facie indicate that any of the accused had caused any injury to R.K. Jain which could have resulted in his death.

16. Witness Saiyad T. Pasa, who happened to be the Inspector of Commercial Tax Department, said that on 15-7-2004 at about 8.30 A.M. when he went to Lokayukt Office taking tea and other articles for R.K. Jain, he saw him lying in the bathroom in unconscious condition. He and two officials of Lokayukt Department took him to Hospital. According to him, R.K. Jain was suffering with Asthma. He used inhaler for treatment.

17. On consideration of the statements of witnesses recorded during investigation it prima facie appears that the deceased had been tortured and maltreated during the period he was in custody of the accused persons.

18. For finding out as to what offence prima facie appears to have been committed by accused persons and whether they prima facie appear liable for causing the death of the deceased, consideration of medical evidence is necessary.

19. In the post-mortem examination of the dead-body a team of three doctors had found following injuries:

(1) Scalp internally ecchymosed (contusion) 16 x 12 cm - area on vault (vertex) sagittally. Skull bones healthy. Ecchymosis reddish blue.

(2) Two lacerations, each 1 x 0.2 cm, sub mucosa deep, situated 0.5 cm. apart and parallel to each other on lower lip on left side against Lt. incisor teeth, nearly transverse.

(3) Multiple small superficial abrasion. Lacerations of 0.2 to 0.3 cm. in size scattered on Rt. side of lower lip, mucosa deep, fresh.

(4) Left side ribs 2nd to 6th ribs fractured between mid clavicular and anterior axillary line.

(5) Rt. Side ribs 2nd to 6th ribs fractured between mid clavicular and anterior axillary line.

On both side intercostal muscles and pleura diffusely ecchymosed between 2nd rib and 7th intercostal space in vertical plane, and between mid clavicular line to post axillary line in horizontal plane. Pleura torn at fracture site of ribs. These findings are identical and symmetrical on both sides. No ecchymosis seen in the sub cutaneous tissues superficial layers of muscles. Costal cartilages partially calcified.

(6) Superficial abrasion 5.5 cm long, transverse present on anterior aspect of neck, at upper margin of thyroid cartilage and in natural fold of neck. The mark is 0.4 cm. on left side and gradually tapering towards right side and merged in natural fold of skin of neck. Mark is reddish brown and partial dermal in depth underneath the cartilage and hyoid bone soft tissues. No injury is seen on lower part of abdomen. Duration of injuries within 12 hours.

Opinion:

Death was due to asphyxia.

A superficial abraded legature mark on ant. Aspect of neck, blunt injury on vertex (head), Emphysema of Lt. side of chest, neck and lower jaw present.

Lung showed signs of obstructive lung disease i.e., obstructive airway disease.

Signs of hospitalization and resuscitation present.

20. Perusal of the O.P.D. case sheet of the Hamidiya Hospital, Bhopal, reveals that immediately after R.K. Jain was taken to hospital prompt and immediate resuscitation and all life saving measures had been given to him. It was noted that he was suffering with chronic bronchial asthma. Since pulse beat and heart sounds were not audible and he was unconscious C.P.C.R. (cardiac pulmonary Resuscitation) was started alongwith other treatment by which for some time cardiac pulsation had started and the patient had regained cardiac activity. D.C. shock was also given during the treatment, but ultimately R.K. Jain died around 1.30 P.M. On query about the nature of injuries found on the body of deceased and about the cause of death, it was opined by Dr. D. K. Satpathi, Director, Medico Legal Institute, Bhopal, that injury Nos. 1 and 6 were simple in nature and were not sufficient for causing the death. Injury Nos. 2, 3, 4 and 5 found on the ribs of both sides were caused during the treatment of the deceased in the hospital and had no connection with the death of deceased. The death was caused due to asphyxia. Dr. V.K. Sharma, Professor and Head of the Department of Medicines, Gandhi Medical College, Bhopal, on query, gave his opinion that the injury Nos. 2, 3, 4 and 5 were received by the deceased during the course of treatment. At the time of admission only an injury on the neck was recorded. Dr. Nirbhay Shrivastava, Head of the Department of Orthopedics had examined the deceased. In his clinical notes, there was no mention about any injury to ribs. Similarly, Dr. D.K. Satpathi, Director of Medico Legal Institute had also examined the deceased while he was alive, but there was no mention by him about the injury Nos. 2, 3, 4 and 5. Dr. D.S. Badkul had mentioned only about a legature

mark on the neck. In the opinion of Dr. V.K. Sharma, the injury Nos. 2, 3, 4 and 5 (ribs injuries) were possible by the cardiac massage, artificial respiration, C.P.R. and chest compression etc. given during the treatment, before the death of the patient.

21. On due consideration of the above medical evidence on record, it cannot be prima facie held that the injuries to ribs of the deceased were received by him before he reached the hospital. In view of the clear and positive expert evidence on record that the aforesaid injuries were resulted in the course of treatment, it cannot be held that they were caused by the accused persons while the deceased was in their custody. The other injuries found on the body were simple in nature and had no connection with the death of the deceased.

22. Learned Counsel for the accused persons had referred to the guidelines given to students in the Book "Emergency Care" Third Edition by Harvey D. Grant Robert H. Murray, Jr. J. David Bergeron, wherein it has been mentioned that the injury to ribs are most common in the C.P.R. treatment. The complications of C.P.R. have been highlighted as under:

Injury to the rib cage is the most common complication of CPR. When the hands are placed too high on the sternum, fractures to the upper sternum and the clavicles may occur. If the hands are too low on the sternum, the xiphoid may be fractured or driven down into the liver, producing severe lacerations (cuts) and profuse internal bleeding when the hands are placed too far off centre, or when they are allowed to slip from their position over the CPR compression site, the ribs of their cartilage attachments may be fractured.

Other complications may result from improper CPR efforts, but most are easy to avoid by following AHA guidelines. Even when CPR is correctly performed, ribs may be fractured. In such cases, do Not stop CPR, Far better that the patient suffer a few broken ribs, than die because you did not continue to perform CPR for fear of inflicting additional injury.

23. On examining the material and the evidence on record in totality in the light of the law laid down in S.B. John's case (supra), I am of the considered opinion that in view of the positive medical evidence that the injuries found on the ribs of the deceased had resulted in the course of treatment of the deceased and the other simple injuries found on the body of the deceased were not the cause of his death, the accused/petitioners cannot be prima facie charged for causing the death of deceased. As such, I find no material on record sufficient for framing charge against them for the offence u/s 304II or Section 302 of the IPC. However, there is sufficient material to hold that the simple injuries were caused to deceased while he was in custody of accused persons.

24. For the above reasons, the impugned order passed by the Sessions Judge, framing charge u/s 304-II of IPC against the accused persons is set aside, with the direction for framing of charge u/s 323/34 of the IPC against them and trial according to law.

25. Accordingly, the Criminal Revision No. 1114 of 2005 filed by the complainant against the accused persons is dismissed and the Criminal Revisions Nos. 1203 of 2005 and 1204 of 2005 filed by the accused/petitioners are partly allowed as herein above observed.