

(2013) 12 KAR CK 0332

In the Karnataka High Court

Case No : Criminal Revision Petition 2610 of 2011 and Criminal Appeal 3629 of 2012

Sudheer Krishna @ Krishnan Sudhir

APPELLANT

Vs

State of Karnataka
 State of Karnataka Vs Sudheer
Krishna @ Krishnan Sudhir

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0332

Hon'ble Judges : Huvadi G. Ramesh, J

Bench : Single Bench

Advocate : S.S. Kumman, for Sri Shivakumar Kalloor, in Criminal RP 2610/2011 and Sri S.S. Aspal, GP in Criminal A. 3530 and 3629/2012, for the Appellant; S.S. Aspal, GP in Cr. RP 2610/2011, Sri S.S. Kumman in Cr. A. 3629/2012 and Sri Shivanand V. Pattanshetti, for R1, 3 and 4 in Cr. A. 3530/2012, for the Respondent

Final Decision : Partly Allowed

Judgement

Huvadi G. Ramesh, J.—The Revision Petition is filed by the accused Sudheer Krishnan and the two appeals are filed by the State challenging the order of the JMFC, Raichur in CC 30/2008 on 22.12.2009 by which for the alleged offence under S. 304A, IPC the trial court has sentenced accused 1 to 4 and 6 to undergo rigorous imprisonment for six months and to pay fine of Rs. 5,000/- each and default sentence of fifteen days. Out of the fine amount, it is also ordered to deposit an amount of Rs. 23,000/- to be paid to the complainant as compensation and to confiscate Rs. 2,000/- to the State. It appears as per the prosecution, the son of the complainant Ritesh aged 7 years and another son Rishab aged 5 years were studying in Karnataka Welfare Trust School, Raichur. Ritesh was studying in I standard and Rishab in UKG. On 4.12.2007 around 9.30 a.m. the sons of the complainant went to the school and the complainant had been to Hyderabad on official work. Around 2.00 p.m. he received a phone call that Rishab had fell in the open septic tank situate in the school and became

unconscious and admitted to hospital by the school authorities and immediately, complainant rushed back to Raichur and found that Rishab had died and his body was kept in the mortuary. In this regard, complaint came to be filed for the offence under S. 304A, IPC. After trial, accused were held guilty of negligence under S. 304A and accused 1 to 4 and 6 were convicted and sentenced to undergo rigorous imprisonment for six months and to pay fine as noted above. The Sessions Court, Raichur while acquitting accused 1 to 4 and sentenced the 6th accused only to pay penalty of Rs. 1 lakh. As against this, the State has preferred appeals - one is against the order of acquittal of accused 1 to 4 and another is in respect of reducing the punishment imposed on accused 6 only to pay fine of Rs. 1 lakh. The revision preferred is against the order of imposing fine on the 6th accused.

2. Heard the counsel representing the parties.

3. The facts are: when the child of the complainant had been to school, he slipped into a septic tank and ultimately, the body was lifted and taken by the school authorities to the hospital and he died in the process of treatment. In the case filed by the complainant, prosecution having examined thirteen witnesses, on hearing, the trial court held the accused guilty of the offence under S. 304A, IPC. In appeal, the Sessions court has acquitted accused 1 to 4 and as against the 6th accused, only fine has been imposed in stead of conviction. Hence the revision and the appeals.

4. The ground raised by the revision petitioner/accused is, none of the witnesses have spoken about seeing the incident and there is no cogent evidence on record to hold the accused guilty. It is further submitted, at the most it is a matter of tortuous liability and not criminal negligence and therefore, sought to allow the revision and dismissal of the appeals filed by the State. Learned counsel has also relied upon the judgment of the Madhya Pradesh High Court in the case of B.P. Ram & Anr. Vs. State of Madhya Pradesh - 1991 CrL LJ 473 to contend that the act of negligence, if any is in the form of omission. To render a person liable for negligence of duty, there must be a degree of care or culpability as to amount to gross negligence on his part and it is not every little bit of mistake that will make a man so liable. Accordingly, it is argued, this is a matter of omission and not a case of gross negligence and it is purely a tortuous liability and not criminal negligence.

5. Per contra, government pleader submitted that there shall be minimum sentence of six months awarded as it is a case of S. 304A, IPC which carries a minimum sentence of six months. The acquittal order passed by the appellate court in respect of accused 1 to 4 and order to pay fine only in respect of the 6th accused in stead of sentencing, is bad and accordingly, sought for allowing the appeals. In support of his argument, counsel has relied upon the decision of the Apex Court in the case of M.S. Grewal and Another Vs. Deep Chand Sood and Others, and contended that for the negligence of the teacher to take due care of students " when the teacher was entrusted with the work of escorting the

students to a picnic near a river and due to negligence of the teacher in allowing the children to play near the river, and there some of the boys fell into a ditch and died due to drowning, the order of conviction under S. 304A, IPC is upheld and accordingly, prayed for allowing the appeals.

6. As it transpires, the septic tank was also having a cover of 2 x 2 ft which was kept open as per the evidence of some of the witnesses and it was also intimated to the management to keep the tank closed as it is endangering. The medical opinion, of course, is death due to drowning as per the evidence of the Doctor - PW 12. Learned Magistrate has opined, despite warning the accused kept open the septic tank and they failed in their duty. Accordingly, he has held, that accused 1 to 4 and 6 are negligent. Incidentally it has also been observed that without recognition/permission the accused were running the school for UKG and I Standard. Of course, other than PWs 1 to 5, other persons have supported the prosecution version regarding negligence on the part of the respondents in keeping open the septic tank in the school premises and failed to take necessary measure to carry out safety measures. But the fact remains now, whether the offence under S. 304A for which the accused have been convicted by the trial court, which of course has been set aside by the Sessions Judge, needs interference.

7. In the case on hand, there is negligence on the part of accused 1 to 6 in not keeping the septic tank closed. Of course, there is certain amount of negligence on the part of the accused and as such, it may attract civil liability or tortious liability since there was possibility of the child going near the septic tank and suffering a casualty. The very act has to be treated as tortious act and tortious liability is there. It is submitted, before the Consumer Forum the father of the victim has filed a complaint and the complainant has got about Rs. 2 lakhs compensation and also Rs. 1 lakh by virtue of the direction of the court for the accused to deposit the said amount. When it is held there is omission and there was a duty on the part of the accused to take care and that has been omitted due to negligence or carelessness, suitable compensation has to be awarded. While holding that it is a case of negligence by way of omission, it is for the respondents to make good the loss to overcome the situation and pay just compensation of another Rs. 3 lakhs to the father of the deceased child. Accordingly, while upholding the order of acquittal, it is held that it is a clear case of negligence by way of omission and it may not attract S. 304A, IPC. It is for the respondents to pay compensation of Rs. 3 lakhs within two months to the father of the deceased child apart from the amount of Rs. 2 lakhs ordered by the Consumer Forum and Rs. 1 lakh ordered to be deposited by the Court. Revision petition is allowed in part. So also, the appeals filed by the State against the order of acquittal passed are dismissed holding that the appeals filed by the State are not maintainable. The amount in deposit shall be released in favour of the complainant/father of deceased.