

S. Sugumar and Another Vs. State represented by the Inspector of Police

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Court : Chennai

Decided On : Sep-19-2016

Judge : P.N. Prakash

Appeal No. : Crl.O.P.No. 19136 of 2016 & Crl.M.P.Nos. 8995 & 8996 of 2016

Appellant : S. Sugumar and Another

Respondent : State represented by the Inspector of Police

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.284 of 2013 on the file of Judicial Magistrate Court, Alandur and quash the same.

1. This Criminal Original Petition is filed to call for the records in C.C.No.284 of 2013 on the file of Judicial Magistrate Court, Alandur and quash the same.
2. An unfortunate accident took place on 26.10.2012 in which one Karuppasamy, a Junior Engineer-Trainee, lost his life, pursuant to which, the first respondent police registered an FIR in Crime No.3912 of 2012 on 26.10.2012 under Section 304-A IPC on the statement given by one V. Devarajan/second respondent/de facto complainant, a co-employee and after completing the investigation, has filed a final report in C.C. No.284 of 2013 before the Judicial Magistrate Court, Alandur under Section 304-A IPC against Sukumar and Senthamizhchelvan for quashing which, the accused are before this Court.

3. Audco India Ltd. manufactures valves which are subjected to cryogenic test by placing the valves in a nitrogen well. Admittedly, the area is a barricaded one and entry into it is prohibited. Karuppasamy joined Audco India Ltd. as a Junior Engineer- Trainee and it is alleged that on 26.10.2012, he went inside the barricaded portion, slipped and fell into the well and inhaled nitrogen. On hearing his cries, Devarajan and others tried to rescue him from the well, but, in vain. During his attempt to save the life of Karuppasamy, Devarajan also inhaled nitrogen and was admitted to hospital, but, fortunately he survived. On the complaint given by Devarajan, the FIR was registered, as aforestated.

4. Concededly, the Management of Audco India Ltd. has paid a sum of Rs.22 lakhs by way of compensation to the parents of the deceased Karuppasamy. It is also beyond cavil that the petitioners are employees of Audco India Ltd and they were working in night shift on the previous day. The allegation against them is that they failed to close the nitrogen valve, which had resulted in the death of Karuppasamy. Hence, they are charged for the offence under Section 304-A, IPC.

5. The learned counsel for the petitioners submitted that even if the allegations in the final report are accepted, yet, the prosecution of the petitioners is an abuse of process of law. He contended that even if it is admitted that the petitioners had failed to close the nitrogen valve on the previous night while they were on shift duty, yet, that was not the reason that resulted in the death of Karuppasamy.

6. The learned Additional Public Prosecutor refuted the allegations and submitted that the death of Karuppasamy was on account of he inhaling the gas, which was because the petitioners had not closed the nitrogen valve the previous night while they were on shift duty.

7. This Court has considered the rival submissions and also perused the materials available on record carefully.

8. The Section 161 statement of the witnesses in the factory, viz., K.S. Patil, B. Suresh and Ramakrishnan clearly show that Karuppasamy went to the well where he slipped and fell inside. Thereafter, he had inhaled nitrogen gas, which had resulted in his death. The fall into the well was not on account of the alleged

negligence of the petitioners.

9. The Supreme Court, in *Sushil Ansal vs. State through Central Bureau of Investigation*, [(2014 6 SCC 173], (for brevity Sushil Ansal) has elaborately discussed the law of negligence in tort and crime, wherein, at paragraph nos.81 to 84, it has been held as under:

81. Suffice it to say that this Court has in *Kurban Hussein s case* accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A of the IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another person s negligence. A subsequent decision of this Court in *Suleman Rahiman Mulani v. State of Maharashtra* AIR 1968 SC 829 has once again approved the view taken in *Omkar Rampratap case* that the act of the accused must be proved to be the *causa causans* and not simply a *causa sine qua non* for the death of the victim in a case under Section 304-A of the IPC. To the same effect are the decisions of this Court in *Rustom Sherior Irani v. State of Maharashtra* 1969 ACJ 70; *Balchandra v. State of Maharashtra* AIR 1968 SC 1319; *Kishan Chand v. State of Haryana*(1970) 3 SCC 904; *S.N Hussain v. State of A.P.* (1972) 3 SCC 18; *Ambalal D. Bhatt v. State of Gujarat* (1972) 3 SCC 525 and *Jacob Mathew s case*.

82. To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the *causa causans* that resulted in the death of the victim.

83. As to what is meant by *causa causans* we may gainfully refer to Black s Law Dictionary (Fifth Edition) which defines that expression as under:

Causa causans-The immediate cause; the last link in the chain of causation.

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines *Causa Causans* as follows:

Causa causans-The immediate cause as opposed to a remote cause; the last link in the chain of causation ; the real effective cause of damage.

84. The expression proximate cause is defined in the 5th edition of Black s Law Dictionary as under:

Proximate cause-That which in a natural and continuous sequence unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. *Wisniewski vs. Great Atlantic and Pac. Tea Company.*, A2d at p.748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

10. As per the aforesaid judgment, the act of the petitioners must have been the *causa causans* for the death of Karuppasamy. Even according to the prosecution case, the opening of the valve by the petitioners was not the proximate cause that has resulted in the death of the victim. The proximate cause was he slipping into the well, when he inhaled nitrogen and died. It is not the prosecution case that the petitioners had pushed the victim into the well or had directed him to get into the well. Incontrovertibly, even according to the prosecution case, the petitioners had left the factory after their shift was over.

11 Thus, applying the test propounded by the Supreme Court in *Sushil Ansal*, this Court has no hesitation in holding that the prosecution of the petitioners is clearly an abuse of process of law and is liable to be quashed. Accordingly, the prosecution as against the petitioners in C.C.No.284 of 2013 on the file of Judicial Magistrate Court, Alandur, is quashed.

In the upshot, this Criminal Original Petition is allowed. Connected Crl.M.Ps. are closed.

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