

Bipul Kumar Vs. State of Bihar and anr.

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Court : Patna

Decided On : Nov-06-2006

Judge : Sadanand Mukherjee, J.

Appellant : Bipul Kumar

Respondent : State of Bihar and anr.

Disposition : Appeal allowed

Prior history : Sadanand Mukherjee, J. 1. This is an application for quashing the order dated 24.9.2005 passed by the learned Sub divisional Judicial Magistrate, Nawadah by which the Court took cognizance for the offence under Section 304 of the I.P.C. The application also seeks for quashing the entire criminal prosecution in G.R. No. 2661 of 2004/ 2485 of 2005 arising out of Nawadah Town P.S. Case No. 360 of 2004 dated 13.12.2004 under Section 304 of the I.P.C. 2. On 13.12.2004 one Sabo Devi lodged a fardbey

Judgement :

Sadanand Mukherjee, J.

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of 2005 arising out of Nawadah Town P.S. Case No. 360 of 2004 dated 13.12.2004 under Section 304 of the I.P.C.

2. On 13.12.2004 one Sabo Devi lodged a fardbeyan alleging therein that the petitioner came to the informant's house and told the informant's husband that there was break down of electricity in his house. The allegation is that the petitioner forcibly took the informant's husband who was electric 'mistry', for repair of the electric line from the transformer. The husband of the informant, namely, Indradeo Bishwakarma @ Khokha Mistri while repairing the electric line got electrocuted and died. In the aforesaid fardbeyan, it is stated that the tenant Baishakhia Devi was present when the deceased was forcibly taken by the petitioner.

3. On the basis of the aforesaid statement of the informant Nawadah Town P.S. Case No. 360 of 2004 dated 13.12.2004 under Section 304 of the I.P.C. was registered against the petitioner for investigation Charge sheet was submitted against the petitioner under Section 304 of the I.P.C. Vide order dated 24.9.2005. the court below took, cognizance under Section 304 of the I.P.C. and transferred the case to the Court of Subdivisional Judicial Magistrate, 1st Class, Nawadah. Learned S.D.J.M. heard the matter and ordered for issuance of summons... In the aforesaid order the learned court below has not referred to about filing of the charge sheet under Section 304 of the I.P.C. He had however not recorded (sic) reasons for taking cognizance under Section 304 I.P.C.

4. It has been submitted on behalf of the petitioner that the petitioner was posted as Medical Officer Incharge of Primary Health Centre, Atari, in the district of Gaya and at the alleged time of occurrence he was as usual working there and was not even present there at the place of occurrence and he has been falsely implicated in this case. It is submitted that the deceased himself climbed on the transformer for doing some work and when he suffered electric shock in the process, he died and at the behest of some mischief monger the informant implicated the petitioner. The postmortem of the deceased was done on 13.12.2004 itself by the Medical Officer Incharge, Sadar Hospital, Nawada and the doctor found that the death took place on account of electric shock and burn.

5. With reference to paragraph 17 of the case diary it has been submitted that the informant had never seen the petitioner and further one person coming to her house telling her that her husband was required for making repair of the electric line. In the case diary the informant's tenant Baishakhia Devi in whose presence, according to the fardbeyan, the deceased was forcibly taken by the petitioner. has stated, on the contrary, that on the fateful day she had gone away to the market for buying vegetables and there she learnt that some one had climbed on the transformer for making repair and had died due to electric shock and when she came from the market near Indira Chowk she found the deceased Indradeo Bishwakarma Khokha Mistri hanging on the electric wire. It has also been stated that the electricity was not reaching in Indradeo Bishwa karma's (deceased') house and he had been telling since quite a few days about connecting the wire with the transformer. It is also submitted that the witnesses in paragraphs 10 to 12. 18 and 19 ;of the case diary have stated that the deceased frequently used to climb on the transformer for making repairs and did not listen to anyone and that he climbed on the fateful day and there was explosion and the deceased suffered electric shock and died.

6. In course of investigation no witness had stated in any way that the petitioner forced or even suggested the deceased to climb on the electric pole. Besides that before the Investigating Officer documents have been produced to show that on the fateful day the petitioner was discharging the duty at Primary Health Centre, Atari.

7. Under Section 190(6) Cr.P.C. cognizance of any offence can be taken by competent court, as laid down in the aforesaid provision upon a police report of such facts which constitute an offence. Police report has been defined under the Criminal Procedure Code as a report forwarded to the Court by the Police Office. After such report having been received, the Magistrate forms an opinion whether the facts set out in the report constitute offence. When the report is submitted by the police after investigation the Magistrate has to deal with it applying judicial mind, Section 172 Cr. P.C. makes it obligatory on the Police Officer making investigation to maintain a diary recording various particulars of diary and in the manner indicated in the section.

8. Section 173 Cr.P.C. provides for investigation to be completed without unnecessary delay and also makes it obligatory on the Officer-in-charge of the Police Station to send a report to the Magistrate concerned in the manner provided for therein, containing the necessary particulars. It appears from the order taking cognizance and (sic) that the impugned order of cognizance speaks of perusal of the case diary as well as the charge-sheet, i.e., the report under Section 173(2) Cr.P.C. and thereafter taking of cognizance under Section 304 I.P.C. It was incumbent, upon the Magistrate to find out from the police report under Section 173(2) Cr.P.C. as also the police record whether the facts therein constitute the offence under Section 304 I.P.C. The case diary has been discussed at length by the Sessions Judge vide Annexure-3 for another purpose-, i.e. for the purpose of the disposal of an anticipatory bail application.. Various details of the case diary deserve to be taken into consideration in determining whether the facts constitute an offence under Section 304 I.P.C. It may be mentioned here that since the aforesaid discussion vide Annexure- 3 in respect of case diary has not been controverted by Opposite Party No. 2, case diary was not called for and in the quashing application the aforesaid facts in the case diary have been mentioned which too has not been controverted.

9. It appears that the postmortem report shows the death on account of electric shock and burn. At paragraph 17 of the case diary the Informant herself stated that she had never seen the petitioner and one person coming to her house and introducing himself as Dr. Bipul Kumar. taking away her husband for making repairs. At paragraph- 9 of the case diary the informant's tenant Bisakhiya Devi in whose presence, according to the fardbeyan, the deceased was forcibly taken away by the petitioner, has stated, on the contrary. that on the fateful day she had gone away to the market for buying vegetable and that when she was in the market, she learnt that someone had climbed on the transformer for making electric repairs and had died on account of electric shock. In the case diary her statement has been noted in which it has been stated that when she came from the market near Indira Chowk she found that her landlord Indradeo vishwakarka was hanging dead on the electric wire. She has also stated that electricity was not reaching Indradeo Vishwakarma's house and, therefore, he had been telling since quite a few days about connecting wire with the transformer.

10. The witnesses in paragraphs 10 to 12, 18 and 19 of the case diary have stated that the deceased frequently used to climb on the transformer for making repairs and would not heed even to forbiddings and that as he did so on the fateful day, there was an explosion and suffering electric shock he died. No witness has stated that the petitioner in any way forced or even suggested the deceased to climb and make repairs. Case diary also shows that documents were produced before the Investigating Officer to show that the petitioner was discharging his duty at the place of his posting, namely, Primary Health Centre, Atari.

11. In the aforesaid background it has to be seen whether any offence is made out under Section 304 IPC. Part-I or Section 304 I.P.C., The former contemplates intention to cause death or causing such bodily injury which is likely to cause death .whereas Part-II of Section 304 I.P.C. contemplates act within the knowledge that if the act is done it is likely to cause death. To attract Section 304 I.P.C. any of the aforesaid circumstances should exist. From the facts constituting the offence as discussed above even if the bald allegation in the F.I.R. is taken into consideration ,although the entire facts covered in course of investigation are to be looked into for the purpose of determining whether the facts set out in the police report make out an offence, not only do not reveal any overt act but also do not indicate whether there was an intention- on part of the petitioner to inflict particular bodily injury nor' the same reveals any knowledge of the offender of the probability of the death of the deceased. It is well settled that such knowledge on the part of the offender must be the highest degree of probability.

12. A.I.R. 1966 SC 1874 lays down the essential ingredients of both Sections 304 Part and 304 Part-II I.P.C. Both parts are distinguishable inasmuch as in the first part there was intention to cause bodily harm and next there is subjective knowledge that death will be the likely consequence of the intended injury. But the foresight of the death must be present. The mental attitude is thus made of two elements- (a) causing an intentional injury and (b) which Injury the offender has the foresight to know would cause death. Admittedly the deceased had an accidental injury out of electric shock. Constituents set out under Section 300 to cover the elements of culpable homicide not amounting to murder had not been attracted to the given set of facts. No motive has been attributed and in view of the

aforesaid discussion the petitioner cannot be said to have done an act with the knowledge of the likelihood of causing such injury, causing death of the victim. Although cognizance has not been taken under Section 304A, the same also cannot be imported, as the petitioner even prima facie has not caused any rash and negligent act to impose criminal liability under Section 304A I.P.C.,

13. Section 482 Cr.P.C. for quashing the proceeding under inherent power of the Court has to be used with circumspection and it is well settled that the High Court should exercise power under Section 432 Cr.P.C. sparingly.

14. However, the High. Court is entitled to quash the proceeding if it comes, to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that ends of justice do not require so : 1977 CriLJ1125 .

15. The Hon'ble Supreme Court summarises some categories of cases where inherent power should be exercised to quash proceeding. In R.P. Kapoor's case as reported in A.I.R . 1960 SC 866 a proceeding can be quashed while allegation in the F.I.R. or complaint taken on its face-value do not constitute any offence or where the allegation constitute an offence where there is no legal evidence or evidence adduced clearly fails to prove the charge. It has been laid down therein that in dealing with last class, of cases it is important to bear in mind the distinction between the case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made and in cases where there is legal evidence which on appreciation may or may not support the accusation. It is however, clearly set out therein that when exercising the jurisdiction, the High Court Would not ordinarily embark upon enquiry whether the evidence in question is reliable or not. The Supreme Court in Bhaskar Chattaraj v. State of west Bengal (1991) Cr.L. 451 (SC) held as follows:

Statement of witnesses under Section 161 Cr.P.C. and perusal of record do not show any material justifying the implication of the accused persons in an alleged offence under Section 448 I.P.C. Prosecution against him was held to be an abuse of the process of the Court. Charges against him were quashed by the Supreme Court.

16. As discussed above the statement of witnesses under Section 161 Cr.P.C. and from the discussion with regard to the materials in the case diary offence under Section 301 I.P.C. has been prima facie constituted, even if the case of the prosecution is taken on its face value, it will be an abuse of the process of the court and continue with the proceeding.

17. Under the facts and circumstances as set out above, the order of cognizance as also prosecution of the petitioner, namely, Bipul Kumar is liable to be quashed under inherent power of the Court. The order of cognizance and the proceeding are quashed accordingly. 18. This application under Section 482 Cr.P.C. thus stands allowed.

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