

Tarseen Chand Vs. State

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Court : Delhi

Decided On : Jan-17-1985

Reported in : I(1985)ACC319; 1985(1)Crimes948; 27(1985)DLT319; 1985(8)DRJ216

Judge : Malik Sharief-ud-Din, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304A

Appeal No. : Criminal Revision Appeal No. 12 of 1984

Appellant : Tarseen Chand

Respondent : State

Advocate for Pet/Ap. : R.P. Mathur and; H.C. Gulati, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) The petitioner was given notice of the offence under Section 304-A Indian Penal Code by Mr. A.S. Dateer, Metropolitan Magistrate, Delhi, and the grievance of the petitioner is that on the facts of the case the learned Magistrate has patently erred in issuing the notice as on the bare reading of the facts of the case it cannot be said that any rash or negligent act of the petitioner was responsible for the death of the deceased; and that there is no direct nexus between the death of the

deceased and the rash or negligent act attributed to the accused.

(2) In order to appreciate the point at issue, facts of the case may briefly be reproduced. On 8th February 1980 one Shri Ranjit Singh who was at the relevant time working as Head Master Primari School, Barola, Panchwati, Delhi lodged a report at police station Adarsh Nagar, Delhi stating therein that after the morning prayers were held in the school which finished at 9 A.M. and the-children were returning to their classes, one Kumari Sudha, daughter of Mohan Lal, a student of class lii of school also was returning to the class room and while she was returning a 'balli' 6 ft. long and 8 inches in width fell down from the nearby building under construction by Tarseen Chand contractor (petitioner). The 'balli' hit Sudha on her head which resulted in the fracture of skull and she became unconscious. She was removed to the hospital in the petitioner's car but she died on the same day. It was further stated that the death was caused due to rashness and negligence of the labourers employed by the contractor.

(3) On investigation it was found that the death was caused due to rash or negligent act of the petitioner and the labourers. The police failed to ascertain or identify the name of the labourers and the case against the petitioner was sent to the court.

(4) Contention of Mr. Mathur, learned counsel for, the petitioner is that the death of Kumari Sudha was caused by the rash or negligent act of the labourers and it was wrong to hold him responsible for the same and to issue notice against him. His contention is that there is no proof that rash and negligent act of the accused was the proximate cause of death and there is no direct nexus between the death of the deceased and rash or negligent act attributed to the petitioner. In this regard reliance was placed by Mr. Mathur on *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra* : [1965]2SCR622 , and also on *Suleman Rehiman Mulani and another v. State of Maharashtra*, 1967 CrL. A. R.p 141 The ratio of both these cases is as follows :

'TO impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result 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.'

(5) These observations of the Supreme Court are itself based on the observations made by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap*, which have been quoted with approval in the case of *Suleman Rehiman Mulani and another v. State of Maharashtra* (supra).

(6) On the other hand Mr. Gulati has relied upon *S.N. Hussain v. The State of Andhra Pradesh*, : 1972 CriLJ496 . It is therefore necessary to notice the ratio of the observations made by the Supreme Court in that case. It has been observed :

'RASHNESS consists in hazarding a dangerous or want on act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend Upon the circumstances of each case.'

(7) It is thus in the light of what the Supreme Court has said on various occasions that this controversy can be resolved. Mr. Mathur has laid great stress on the observations of the Supreme Court that to foster liability under Section 304-A Indian Penal Code on the petitioner it must be shown that the death of the deceased occurred as a direct result of rash or negligent act of the accused and that the act must be the proximate and efficient cause without the intervention of another's negligence. I am of the view that the reference to the expression 'without the intervention of another's negligence' means the negligence of deceased and not to the negligence of the labourers employed as in the present case. The solution to the question posed therefore hinges on the meaning that can appropriately be given to the words 'rash or negligent act'. I would like to make it clear right in the beginning that Section 304-A is attracted where there is no

criminal intent and it applies to acts not criminal by themselves. That is what exactly has been observed by the Supreme Court in S. N. Hussain's case (supra) that in case of rashness criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences while in the negligence, culpability lies in the failure to exercise reasonable and proper care. What ought to have been the extent of reasonableness, of course, depends upon the facts of each and every case.

(8) Under Section 304-A death may be occasioned due to rash act of a person; in that case though there is no criminality in the act itself it flows out of the fact that the person so responsible ought to have known that it is capable of causing injury to another person. The death may also be caused due to negligent act of a person. The expression 'negligent act' has a wider connotation in as much as every one to whom negligence can be attributed will be necessarily responsible for such act. In a case such as the one I am dealing with, the labourer who was negligent also could not have escaped the responsibility but the petitioner cannot raise the contention of not being accountable, for the simple reason that, it was he, who was raising construction and it was for him to exercise reasonable and proper care in avoiding such a mishap. While demolishing the scaffoldings it was the duty of the petitioner to take all reasonable and proper precautions so as to guard against any injury either to public in general or to any individual in particular. It was his duty to enclose the area so that if something had to fall, it should fall within the enclosed limits and, if for some reason it was not possible it was his duty to engage employees to warn public not to pass that way. In the present case this duty was particularly cast upon the petitioner in view of the nearby school and school children. Culpability of the petitioner therefore lies in failing to take reasonable and proper precautions so as to prevent any mishap. His case as such falls under Section 304-A IPC. There is no other point involved in the petition. For the reasons stated above, the petition is dismissed.