

Sanjiv Nanda Vs. State

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Court : Delhi

Decided On : Apr-05-1999

Reported in : 1999IIAD(Delhi)857; 79(1999)DLT141; 1999(49)DRJ278

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 299, 300, 304-A and 338

Appeal No. : Cri.M.(M) No.443/99

Appellant : Sanjiv Nanda

Respondent : State

Advocate for Def. : Mr. I.U. Khan, ; Mr. Suhail Khan, ; Mr. Raman Sawhney a

Advocate for Pet/Ap. : Mr. R.K. Anand, Sr. Adv.,; Mr. Arun Birbal,; Mr. Kanchan Si

Judgement :

ORDER

J.B.Goel, J.

1. The petitioner is seeking bail under Section 439 of the Code of Criminal Procedure (for short the ' Code') in FIR No.17/99 registered at P.S. Lodi Colony,

New Delhi under Sections 338/304/201/34 IPC in the case now commonly known as 'BMW Accident Case'.

2. Briefly the facts as emerged during investigation so far are as follows.

3. Rajan Kumar, a CRPF Constable with Peru Lal and Ram Raj, two Home Guards of Delhi Police were on picket duty at Lodhi Road near Car Care Centre Petrol Pump during the night of 9-10 January, 1999. Four persons, namely, Manoj, Mehdi Hasan, Nashir and Gulab while going towards Nizamuddin railway station were intercepted by the said police picket for interrogation/checking. At about 4.30 a.m. car No. M-312 LYP driven by the petitioner came from the side of Nizamuddin, took turn towards extreme left side, struck against the seven persons present there and after so hitting the car went towards the right side and after covering some distance, after striking the central dividing verge, swerved towards left with the central verge and then stopped for a while, the driver and one of his colleague sitting with him got down from the car, both saw below and then the petitioner drove away the car, leaving behind the persons after dragging them for some distance.

4. In this incident, Rajan Kumar, Ram Raj and Gulab had died at the scene of occurrence and other four persons were injured who were removed to the AIIMS. Out of whom 3 persons died in Hospital and fourth Manoj has survived.

5. The scale site plan depicts broadly the scene of occurrence. The place of incident is Lodhi Road, which is divided into two parts by central dividing verge making the road one way. The width of the road on the side of the occurrence is 1040 cms. (about 35 ft.). This is a straight road running with Nizamuddin on its North. Point 'A' is the place where the seven persons involved were present and struck by the offending car after turning towards the left. Point 'A' is at a distance of 1 kadam (about 2-1/2 ft.) from the left footpath towards the road. After striking at point 'A' the car swerved towards right, after covering a distance of about 2620 cms. it struck against the central verge at point 'B' and after going further along the central verge, it stopped when the driver and his companion sitting with him had got down and after looking below drove away the car over the victims and dragging them under the car, leaving behind some dead and some injured. Piru

Lal, Manoj, Mehdi Hassan and Nashir injured had been thrown at points 'A', 'B' 'D' and 'F' and dead bodies of Ram Raj (with one leg cut off), Rajan Kumar and Gulab, after being dragged were lying in pool of blood at points 'C', 'G' and 'H' with the right leg of Const. Ram Raj lying at point 'I'. When the car was seized piece(s) of human flesh were recovered struck below the car. The distance between point 'A' to 'B' is 2620 cms., from point 'B' to 'C' 640 cms., from points 'C' to 'E' 760 cms. from point 'E' to 'G' 1200 cms., from point 'G' to 'H' 2100 cms. and from points 'H' to 'I' 300 cms. whereas place D is between points 'B' and 'C' and 'F' between points 'E' and 'G' on the central verge. After resuming driving after halt and leaving behind the injured and dead, the car had left behind trails of oil from it which were followed by Inspector Jagdish Pandey leading to the recovery of the offending car at house No. 50, Golf Links.

6. During arguments for the purpose of this application it is not disputed that the petitioner was driving the offending car and the car involved is M-312 LYP. There is also material obtained during investigation to this effect.

7. Witnesses Hari Shankar Yadav, Sushil Lakshman Kulkarni and injured Manoj have been examined as witnesses of occurrence.

8. PW Hari Shankar Yadav an attendant who was on duty at the aforesaid petrol pump at that time has stated that the car came from the side of Nizamuddin with high speed struck against 6-7 persons on the road in front of the petrol pump, 2-3 of those persons were flown on the bonnet of the car, one of whom was thrown at a distance, the car collided with central verge, one of the person on the bonnet fell on the central verge, then the car after going some distance had stopped, a person from it had got down and then drove away the car leaving behind two persons after dragging them under the car.

9. Sushil Lakshman Kulkarni was passing near that petrol pump in search of a taxi/TSR to go to Nizamuddin railway station to catch train for Bhopal, when at about 4.30/4.35 a.m. he saw a car coming with very high speed, swerved towards left side, struck against the persons standing towards left side near the foot path; 2-3 of them were flown on the bonnet, then they fell down and were dragged by the car towards right side, 2-3 persons were thrown on the road, some were

dragged and some had come under the car were shouting 'bachao bachao, stop the car' but the driver instead of stopping accelerated it, lost control and after striking against the central verge had stopped; some injured persons were entangled below the car; the driver of the car and one of his companion got down, looked below and then the companion shouted 'Sanjeev let us go'. The driver speedily drove away the car dragging the persons entangled under the car who were still shouting; who perhaps could have survived had the car not been driven further. One leg of one of those persons was left behind at some distance ahead.

10. And Manoj, the injured has stated that at about 4.30 a.m. when he, and his three companions Nashir, Mehdi Hassan and Gulab while going to see off Gulab at Nizamuddin railway station, were stopped by 3 police men near the petrol pump for interrogation, when a car came from Nizamuddin side with high speed and struck them; he was flown on the bonnet, car swerved towards right and did not stop; he fell down near central verge, the car after colliding against the central verge after some distance had stopped; the driver had got down, looked below and then drove away the car towards Dayal Singh College. He had seen two persons left behind from underneath the car left at two places.

11. Learned counsel for the petitioner has contended the case would fall under Section 304-A IPC or at the most Part-II of Section 304 IPC; the petitioner has been in custody since 10.1.1999, one cannot be detained in jail as a punishment; that he is not a previous convict; is a student in USA and has to take his examination in April; that his presence is not required by the police any further as investigation has been completed. He has cited some case law. Whereas learned counsel for the State has contended that the case has been registered under Sections 338/304/201 IPC which is not final as the offence could be changed at any time and even by the Court after taking into consideration the facts and circumstances of the case; that the petitioner is neither a resident Indian nor Indian national, he is a British National settled abroad, he is not likely to be available for trial, there is danger of trial being dragged, witnesses/evidence being tampered with or destroyed or lost due to delay and also in view of the seriousness and gravity of the offence, it will not be just or proper nor in the interest of the public nor for proper administration of justice to admit the petitioner on bail.

12. Whether it is a mere case of accident falling under Section 304-A IPC?

Section 304-A IPC reads as under:-

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

13. This Section deals with homicide by negligence and carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide not amounting to murder under Section 299 or murder under Section 300 IPC. This will apply where there is no intention to cause death and no knowledge that the act done in all probability will cause death. Where there is requisite intention and knowledge in committing the act causing the death, Section 304-A IPC will have to make room for the graver and more serious charge, may be, culpable homicide or murder depending upon the facts and circumstances of the case. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death of some persons, it may not be a case of mere rash and negligent driving but may amount to culpable homicide or murder.

14. Each case therefore will have to be considered on its own peculiar facts to determine the culpability of the wrongdoer. (State Vs . Haider Ali Kalubhai : 1976 CriLJ732)

Section 299 IPC defines culpable homicide which may or may not amount to murder, whereas Section 300 IPC defines murder.

15. Section 299 IPC provides :-

A person commits culpable homicide if the act by which the death is caused :

(a) is done with the intention of causing death, or

(b) with the intention of causing such bodily injury as is likely to cause death, or,

(c) with the knowledge that such act, is likely to cause death.

Section 300 provides as under :-

Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done :

(A) Intention

(i) with the intention of causing death; or

(ii) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused; or

(iii) with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(B) Knowledge:

(iv) with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury.

First three clauses speak of intention while 4th Clause of knowledge.

16. Putting it shortly all acts of killing done with the intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the most probable result, are prima facie murder. While those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder.

17. Intention is a subjective element and in most of the cases direct proof of intention is not forthcoming. It has been rightly said that 'the Devil himself knows not the thoughts of man'.

18. From the facts of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death,

if all the circumstances of the case justify such a presumption.

19. Clause fourthly of Section 300 IPC requires knowledge of the probability of the act causing death and for that purpose intention is not required.

20. Regarding the scope of clause fourthly, in *Anda and Others Vs . The State of Rajasthan*, : 1966 CriLJ171 , Hidayatullah, J. (as his Lordship then was) has observed :-

'The clause 4thly comprehends generally the commission of imminently dangerous acts which must in all probability cause death or cause such bodily injury as is likely to cause death. When such an act is committed with the knowledge that death might be the probable result and without any excuse for incurring the risk of causing death or injury as is likely to cause death, the offence is murder. This clause speaking generally, covers cases in which there is no intention to cause the death of any one in particular. '

21. And in *State of Madhya Pradesh Vs . Ram Prasad*, : 1968 CriLJ1025 :

'Although this clause is usually invoked in those cases where there is no intention to cause the death of any particular person the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death.'

22. Every grown up man is presumed to know the natural and probable consequences of his own acts. The mere fact that the accused had no deliberate intention of killing any particular individual would not take the case outside Clause 4thly of this section where he had no excuse for running the risk.

23. Apart from other circumstances the act of the petitioner in driving away the car after getting down and seeing some injured persons were entangled under his car and crying for life and still dragging them, was not only imminently dangerous, but also too cruel and callous. Apparently, the petitioner had not heeded to the cries of the injured to stop the car there itself and rather drove the car dragging them. This circumstance, inter alia, may take the case out of Section 304-A IPC and also

Section 304 IPC and might amount to murder under Section 300 IPC.

24. In the matter of grant of bail, the case cannot be put in a straightjacket. Facts and circumstances of each case would govern the matter. For granting bail in cases of non-bailable offences particularly more serious and grave or heinous offences where the trial has not still commenced, the Court has to take into consideration various matters such as nature and seriousness of the offences, the conduct of the offender, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, the position and the status of the accused with reference to the victims and the witnesses, reasonable apprehension of witnesses being tampered with or evidence otherwise being lost or destroyed, the larger interest of the public or the State and similar other circumstances. Gurbachan Singh & Ors. Vs . State (Delhi Admn.) : 1978 CriLJ129 and State Vs . Jaspal Singh Gill : 1984 CriLJ1211].

25. Each case thus would depend upon its own backdrop. If enlarged on bail the trial is likely to be dragged and delayed and in the meantime there is every likelihood of the witnesses being tampered with or evidence being destroyed or lost. Such delay not only defeats justice but has great adverse effect on fair and proper administration of criminal justice and in consequence it shakes the faith of the public at large.

26. Petitioner is stated to be neither a resident Indian nor Indian national and had travelled to India on a British Passport. During arguments it was urged on his behalf that he is a student in USA and has to go back to pursue his studies there and to take his examinations. That course would certainly delay the trial. Interest of an individual has to subserve the larger interest of the society. During arguments it was also pointed out that a sum of Rs.40 lakhs has been set part as victims' relief fund by his family. That shows that the petitioner belongs to a very affluent family. Law does not discriminate between high and low, rich and poor. One should not get the impression that administration of justice could be defeated or delayed by a wealthy and influential person. The rule of law demands that it should be administered even handedly and in the best interest of the society.

27. Taking into consideration the nature, gravity and seriousness of the offence and the circumstances of the case, the position of the petitioner and the reasonable apprehension of the witnesses being tampered with or the evidence being lost otherwise and the petitioner being not available to face trial without undue delay, in my view it is not a fit case nor in the interest of justice, where the petitioner should be admitted to bail.

28. This petition is accordingly dismissed.

29. Nothing mentioned hereinabove shall be taken to be an expression of opinion on the merits of the case during trial.

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