

Amanullah Khan Vs. State

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Court : Delhi

Decided On : May-26-2006

Reported in : 133(2006)DLT345; 2006(90)DRJ28

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Sections 304A; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Revision P 532/2004

Appellant : Amanullah Khan

Respondent : State

Advocate for Def. : O.P. Saxena, Adv.

Advocate for Pet/Ap. : Vikas Arora, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This revision petition is directed against the order on charge dated 5.6.2004 and the charge itself framed on 5.6.2004 The charge that is being made out against the petitioner is as under :-

That on 19.9.98 at about 2.30 P.M at main hole sewer in front of Sagar Market Gurudwara, Dilshad Garden, Delhi, your compelled the deceased persons Vijay and Lalan to lay MTNL cable without providing safety measures to both the said persons and due to carelessness caused their death on duty and thus thereby committed an offence punishable under Section 304-A IPC and within my cognizance.

2. As per the charge sheet, the case for the prosecution is that on 19.9.1998 ASI D.K. Singh of Police Station Seema Puri received DD No. 65-B dated 19.9.1998 and thereupon he reached the spot and found two MTNL workers / labourers had fallen into the manhole / sewer. The fire brigade was called at the spot and both the persons were taken out and sent to hospital where the doctors declared them as having been brought dead. As per the charge sheet, on an enquiry, it was revealed that both the persons who had lost their lives were working for an MTNL contractor Ammanulla Khan (the present petitioner). It further indicated that the deceased persons (Vijay and Lalan), before they died, entered the said manhole at about 2.30 P.M to lay telephone cables but could not come out. According to the charge sheet, they received electric shocks and because of poisonous gas present in the manhole / sewer, they could not get out and died. Thereafter, statements were recorded under Section 161 Cr.Pc and the postmortem was also conducted at Guru Teg Bahadur Hospital, Dilshad Garden, Delhi. The doctor who conducted the postmortem reserved his opinion regarding the cause of death awaiting the report as regards the viscera which had been sent to the Forensic Science Laboratory (hereinafter referred to as the FSL, Govt. of NCT of Delhi, Malviya Nagar, New Delhi. In the charge sheet, it was clearly noted that although the viscera report was awaited the only option left for determining the cause of death was that it was due to poisonous gas which is generally present in sewer lines. Accordingly, it was noted in the charge sheet that if the viscera establishes that the death had taken place due to poisonous gas then the culpability of the present petitioner (the contractor) would be made out. According to the charge sheet, he was required to check whether there was poisonous gas in the sewer and he should have taken precautionary measures to save their lives. The death of the two persons, according to the charge- sheet, clearly indicated that the present petitioner was guilty of an offence punishable under Section 304-A IPC.

3. The learned Counsel for the petitioner pointed out that the viscera report has since been obtained and, as per the report given by the FSL, the result of the examination reveals the following : On Chemical examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and insecticides could not be detected in exhibits '1A', '1B', '1C' and '1D'.

4. Thus, according to the learned Counsel for the petitioner, no poisonous gas was found and therefore, there was no question of the deceased having lost their lives on account of any poisonous gas as was surmised in the chargesheet. He further referred to the opinion of the doctor who carried out the postmortem report. After receipt of the report from the FSL, the said doctor was of the following opinion:-

After going through the PM report No. 649/98 and CFSL report No. FSL 2003/C-0488 dated 25.7.2003, I am of the opinion that cause of death in this case was pulmonary Oedema.

5. The learned Counsel for the petitioner pointed out that the cause of death given by the doctor was pulmonary oedema which is entirely different from death due to either electric shock or poisonous gas.

6. The learned Counsel for the State, with reference to a medical dictionary, pointed out that pulmonary oedema has been defined as the presence of excessive amounts of fluid in the intercellular tissue spaces of the body, due to increased transudation of fluid from the capillaries. This may be caused by an increase of capillary blood pressure, increased permeability of the capillary wall or reduced plasma protein osmotic pressure; all 3 factors may be present, though one usually predominates. Oedema may be localized or general. Localized oedema is seen with venous or lymphatic obstruction, around inflammatory lesions, or in some allergic conditions. He then stated that pulmonary oedema is the oedema of the lungs, as in left-sided heart failure.

7. Considering the cause of death as given by the doctor, I find that it does not corroborate the cause of death as indicated in the charge sheet. It is also quite unclear as to how exactly the deceased were afflicted with pulmonary oedema. The presence of poisonous gas has been ruled out because of the FSL report.

Electric shock is also not indicated. In fact, it has been ruled out by the electricity department inasmuch as they have given their opinion that the electricity current available in MTNL cable is not sufficient to cause death of a man. No cable other than the MTNL (telephone cable) was present in the sewer line / manhole. therefore, it is not clear as to what pre-cautions the petitioner was to have taken which would have prevented the deaths. In these circumstances, going by the material on record itself and considering the same to be true and correct, it does not appear to me to be a case where the petitioner could be charged with an offence under Section 304-A IPC. As such the impugned order is set aside and the petitioner stands discharged. This revision petition stands disposed of. dusty.

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