

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Judgment: 23rd November, 2009.

+ **CRL.REV.P.930/2003**

ATAUR REHMAN Petitioner
Through: Mr.Baldev Raj, Advocate.

versus

STATE Respondent
Through: Mr.Manoj Ohri, APP.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This revision petition is directed against the impugned order dated 18.7.2003 whereby a prima facie offence under Section 304-A of the IPC had been held to be made out against the accused/petitioner namely Aatur Rehman. Charge under Section 304-A of the IPC had accordingly been directed to be framed against him.

2. On 26.3.2004, proceedings in the Trial Court had been directed to be stayed by an order of this court.

3. The counsel for the petitioner has drawn the attention of the court to the charge-sheet and the statement of Pappu which had

formed the basis of the FIR. Incident is reported to be of 28.6.1998; on the same day the submission of Pappu was recorded. The said statement inter alia reads as follows:

Statement of Pappu son of Shri Ajay Mishra resident of village Jamo PS Jha Jha Jivya Jamoue Bihar aged 20 years.

Stated that I am resident of the mentioned address. I came to Delhi about three months ago in search of work, I am living in a jhuggi near Railway bridge Sadar Bazar, Delhi. I am doing the work of demolishing and breaking old houses at Matka Wali Gali, Chauhan Bangar, Delhi. One boy Suresh Kumar Thakur son of Shri Kartik Thakur aged 20 years belonging to my village was living with me. He was doing the work of demolishing and breaking houses along with me. Today at about 10.30 AM day time when we were doing the work of breaking the house at Matke Wali Gali, Chauhan Banger, Delhi, all of a sudden one wall collapsed on the head of above mentioned Suresh. He sustained injuries and we got him admitted in G.T.B. Hospital wherein he expired. Owner Ataur Rehman of the house No.C-80/3-A gali no.2/7 Matkewali Gali, Chauhan Banger, Delhi is "Farar" at the spot. Legal action may be taken against him. I have heard the statement which is correct.

Sd/-
Pappu

4. Ten witnesses were cited by the prosecution; besides Pappu, Saroj had also been cited as a witness of the prosecution. As per his version under Section 161 of the Cr.PC the deceased Suresh was working with him and after the accident suffered by him, Saroj has helped remove the victim to the hospital. Statement of Subodh Thakur, the brother of the deceased is to the effect that he had identified the dead body of his deceased brother. The other witnesses cited by the prosecution are police officials and doctors. Admittedly, the victim Suresh had been removed to the hospital in a brought dead condition.

5. The short question which has arisen is as to whether the present petitioner who was the owner of the house where the work

of demolition and the breaking of the house was being carried out by the deceased Suresh along with his companions namely Pappu and Saroj is guilty of causing death of Suresh by a rash or negligent act.

6. A rash act is primarily an overhasty act, and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due care and caution. An illegal omission is an 'act' under this section and may constitute an offence if it is negligent.

7. Question whether the act of the petitioner amounted to a culpable rashness or negligence has to depend upon the facts as recited in the FIR and pursuant to the investigation had become the basis of the charge-sheet. Case of the prosecution admittedly cannot go beyond the scope of what is contained in the charge-sheet.

8. To encompass the offence under this Section, there must be a *mense rea* i.e. a criminal negligence. Death should be the direct result of the rash and negligent act of the accused and that act must have been the proximate and efficient cause without the intervention of another's negligence. It must have been the cause *causans*; it is not enough that it may have been cause *sine qua non*. See Kurban Hussein Mohammedali Rangwala vs. State of Maharashtra AIR 1965 SC 1616. Section 304-A requires that the

death due to rash or negligent act must be direct or proximate result of the act.

9. It is on this touch stone that the version of the complainant Pappu has to be examined. Admittedly, Pappu along with deceased Suresh and co-companion Saroj were doing a work of demolition and breaking of old houses at Malka Wali Gali. At 10.30 AM while they were doing this work all of a sudden a wall collapsed on the head of Suresh, he sustained injuries; he was admitted in hospital where he expired. It is not the version of Pappu that Ataur Rehman the petitioner was even present at the spot when the incident had occurred. It is also not the version of the complainant that they were any special circumstances known to the petitioner making him aware that this fateful day was a special day having some element of special risk. The victim and his companions were carrying on their work as usual; the fateful day i.e. 28.6.1998 was one such normal routine day. The wall had fallen down suddenly; it was an accident which had occurred in the normal course of the job assigned to the victim. There is also not a whisper in the complaint that this work was of a dangerous type which was either known or brought to the notice of the petitioner. In these circumstances, it cannot be said that the death of Suresh was the direct result of the rash or negligent act of the petitioner; only role ascribed to the petitioner being that he was the owner of the house who had assigned this job work to the deceased. It could

not be said that the death was the proximate and efficient cause of the act of the petitioner.

10. As enunciated by the Supreme Court the law is that to establish the ingredients of the offence for this section it must be the cause causans; it is not enough that it may have been the causa sine qua non. It is unfortunate that a precious life has been lost but in the absence of any criminal intention which can be attributed to the petitioner of which there is not a whisper in the statement of the complainant; it cannot be said that the death of the victim was by the rash or the negligent act of the petitioner.

11. Learned counsel for the petitioner has relied upon the judgments of Radhey Shyam Padia vs. State of U.P. (H.C.) 2000 (40) 915, Public Prosecutor v. Pitchaiah Moopanar alias Pitchaiah Pillai AIR 1970 Madras 198 (V 57 C 52), Kurban Hussein Mohamedalli Rangawalla vs. State of Maharashtra AIR 1965 SC 1616 (V 52 C 275) and Dharampal v. State of Haryana & Anr. 1995 (1) CCC 407 (HC).

12. Admittedly, because of the wall collapse Suresh had sustained injuries and had died; the other co-workers Pappu and Saroj however escaped unhurt. Present occurrence is an accident, an unfortunate accident but it cannot be said that the petitioner had any criminal intention to cause the death of the victim; he being only the owner of the house in which the work was being

carried out and no other role having been ascribed to him, it is a fit case where the inherent powers of this court are to be invoked.

13. Accordingly, FIR no. 442/1998 registered under Section 304-A of the IPC and all the proceedings emanating therefrom stand quashed.

14. Petition is disposed of accordingly.

(INDERMEET KAUR)
JUDGE

23rd November, 2009
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