

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

CRL.REV.P. 634/2018

Reserved on : 17.01.2020

Date of Decision : 21.01.2020

IN THE MATTER OF:

STATE

..... Petitioner

Through: Ms. Manjeet Arya, APP for State with
Insp. Anand Yadav, P.S. Vasant Kunj

Versus

SIDHARTH SAWHNEY

..... Respondent

Through: Mr. Kuber Boddh, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition has been filed on behalf of the State challenging the order dated 14.05.2018 passed by the Addl. Sessions Judge, Patiala House Courts, New Delhi arising out of FIR No.264/2007, registered under Sections 304-A/34 IPC at Police Station Vasant Kunj, New Delhi.

2. Initially, vide order dated 09.01.2018, the Metropolitan Magistrate had framed charge under Sections 304-A/34 IPC against all the accused persons. In a revision filed on behalf of respondent No.2, the Sessions Court set aside the order of the Metropolitan Magistrate and discharged the petitioner for the offence under Section 304-A IPC.

3. The facts as noted by the Courts below are, that on 29.04.2007, the injured namely, Dashrath was working as a labourer under the supervision of accused persons, namely, Ravi Gulati and Ram Kailash and while working, the injured came in contact with an electric wire as the iron pole he was affixing got in contact with the overhead BSES high tension wire resulting into his death.

4. During investigation, on 30.04.2007, the Investigating Officer recorded statement of Ram Sagar and Ram Pukar, who were also working at the site along with the injured on the said day.

5. Ram Sagar stated that he along with Ram Pukar and Dashrath was working with Raja Tent House. On 29.04.2007, they were decorating the tent at Sahni Farm House under the supervision of Ram Kailash and Ravi Gulati. Dashrath was putting the poles for the tent and complained to the Supervisor Ram Kailash and the Manager Ravi Gulati as it was difficult for him to put the poles alone. However, both Ram Kailash and Ravi Gulati asked him to hurry up else he would not be paid. It was stated that no safety kit was provided to the labourers for doing the aforesaid work. At about 3:30 p.m., while Dashrath was putting up the pole, he lost his balance as a result of which the pole got in touch with the high tension electric wire. Dashrath got electrocuted and later succumbed to his injuries in the hospital. It was stated that Dashrath had died due to negligence of Ram Kailash and Ravi Gulati.

6. To the similar effect is the statement of Ram Pukar.

7. After completing investigation, a charge-sheet was filed against Ram Kailash and Ravi Gulati before the Court of ACMM, who vide order dated 16.01.2009, directed further investigation against the present

respondent, who is the owner of the farm house as well as Satish Kumar, the owner of the Raja Tent and Decorators.

8. Accordingly, the Investigating Officer recorded a supplementary statement of Ram Sagar under Section 161 Cr.P.C. on 03.01.2011 where it was stated that the respondent despite having knowledge of high-tension wires, overlooked everything and got the tent placed below the high-tension wires. The statement further mentioned that the respondent as well as the owner of the tent house were responsible. On the basis of the aforesaid statement, the Investigating Officer filed supplementary charge-sheet where it was stated that the electricity wire was 20 ft above the ground and the height of the tent was about 18 ft. 8 inches. It was further mentioned in the charge-sheet that since the respondent was organizing functions, therefore, he was responsible.

9. Learned APP for the State submitted that since the accident had occurred at the premises of the respondent, therefore, he is liable to be tried for the offence under Section 304-A IPC. Per contra, learned counsel for the respondent urged that no allegation had come against the respondent in the initial statement given by the aforementioned persons. He submitted that as per the initial charge-sheet, neither presence of the respondent at the spot nor his role in the incident was mentioned. It was also urged that the aforesaid witnesses were the labourers of Raja Tent and Decorators and the respondent had no privity of contract with the deceased.

10. The scope of revision under Section 227 of Cr.P.C. and the guiding principles to exercise the power are outlined in catena of decisions where the material placed before the Court should give rise to a

case of strong suspicion against the accused. The Court has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused. [Refer: Sajjan Kumar vs Central Bureau of Investigation¹ and Union of India, Appellant vs. Prafulla Kumar Samal and Anr.²]

11. To impose a criminal liability under Section 304-A IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that the act must be the proximate and efficient cause without the intervention of another's negligence. [Refer: Kurban Hussein Mohameddalli Rangawalla vs. State of Maharashtra³]

12. In Jacob Mathew v. State of Punjab reported as (2005) 6 SCC 1, a case involving medical negligence, Supreme Court analysed the entire law on the subject. The conclusions relevant for the present case are reproduced hereinbelow:-

“48. We sum up our conclusions as under:

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued.

¹(2010) 9 SCC 368

² (1979) 3 SCC 4

³ AIR 1965 SC 1616

The essential components of negligence are three: “duty”, “breach” and “resulting damage”.

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(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word “gross” has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304-A IPC has to be read as qualified by the word “grossly”.

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(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law, specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.

13. The aforesaid judgment was relied upon by the Supreme Court in Naresh Giri v. State of M.P., reported as **(2008) 1 SCC 791** and also by a

Coordinate Bench of this Court in Rajneesh Kler and Ors. V. State reported as **2009 SCC OnLine Del 130**.

14. In Sajjan Kumar (supra), it was held that:

“(vii) if two views are possible and one of them give rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at that stage, he is not to see whether the trial will end in conviction or acquittal”.

15. As per the statements recorded of the witnesses on 30.04.2007, the respondent was not named as an accused for the incident in any manner. The supplementary charge-sheet was filed after a period of four years that relied on a supplementary statement of Ram Sagar recorded on 03.11.2011.

16. The Sessions Court, while passing the impugned order, observed that as per the admitted case of the prosecution, the respondent was neither present at the spot nor supervising the work of fixing the tent or iron pole. In the present case, as observed by the Sessions Court, the deceased was working as a labourer under the supervision of Ram Kailash and Ravi Gulati, the Supervisor and the Manager of Raja Tent and Decorators, who are facing trial. It was also observed that the deceased was not working under direct employment of the respondent and the Investigating Officer did not collect any material to show that the functions were regularly organized by the respondent at the place of the incident. It has come in the first statement of Ram Sagar that the deceased was putting up a pole for fixing the tent and around 3:30, while he was pulling out the pole, it got disbalanced resulting in the pole touching the electric wire.

17. In the facts and circumstances of the case, I do not find any infirmity, illegality or perversity in the impugned order of discharge under Section 304A/34 IPC passed by the Sessions Court. Accordingly, the revision petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 21, 2020
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