

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 14.03.2017

Judgment Pronounced On : 21.03.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1122 of 2016

and

Crl.M.P.No.9708 of 2016

1.David

2.Lourdhsamy @ Lourdu

.... Petitioners

vs

State rep. By
The Inspector of Police,
Thalavadi Police Station,
Erode District.
(Crime No.6 of 2013)

.... Respondent

Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, against the order dated 19.08.2016 made in C.M.P.No.235 of 2016 in S.C.No.91 of 2016 on the file of the learned Mahalir Neethi Mandram/Fast Track Court, Erode.

For Petitioners: Mr.N.Manokaran

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)

O R D E R

The petitioners filed this criminal revision petition challenging the order passed by the learned Sessions Judge, Mahalir Neethi Mandram/Fast Track Court, Erode, dismissing the petition filed under Section 227 Cr.P.C. to discharge them from the charge under Section 304(ii) IPC.

2. The fact of the case, in brief, is as follows:-

(i) The deceased in this case one Santhiya and another injured one Kushma, were studying in 10th standard at one Devine Vidhyalaya Matriculation School at Thottakajanoor in Thalavadi.

On 07.01.2013, after attending a special class in the school, both the deceased and injured were walking along the school play ground, at that time, the first petitioner/A-1 in this case, learning driving in a Mahindra Max Jeep bearing Registration No.TN-36-V-8551, with the assistance of A-2, who was teaching him driving, drove the vehicle in a rash and negligent manner in to the school play ground and dashed against both the deceased and injured. Immediately, the father of the deceased with the help of others took them to the Government Hospital, Thalavadi, where the deceased was declared dead. Thereafter, the father of the deceased lodged a complaint before the respondent police and based on his complaint, a case was registered in Crime No.6 of 2013 for the offence under Sections 279, 337 and 304(ii) IPC and after investigation, the respondent police filed a final report for the offence under Sections 279, 338 and 304(ii) IPC. Thereafter, the petitioners filed a petition under Section 227 Cr.P.C. to discharge them from the charge under Section 304(ii) IPC. The above petition has been filed on the ground that there is no sufficient grounds available for proceeding against the petitioners for the offence under Section 304(ii) IPC, as they have no knowledge to cause the death or bodily injury against the deceased and injured person. The accident took place unexpectedly, while both the deceased and injured students were cross in front of the vehicle suddenly. Hence, no offence has been made out against them to constitute the offence under Section 304(ii) IPC.

3. The above petition was contested by the respondent on the ground that A-1 in this case was learning driving with the help of A-2 in the school play ground and at the time of the accident A-1 did not have any valid driving license and A-2 also did not possess any license to teach driving, and they have willfully driving the vehicle into a school play ground where the students are playing and they have full knowledge that their act will likely cause death. Therefore, the act of the petitioners amounts culpable homicide, not amounting to murder. There are sufficient grounds available to proceed against the petitioners for the offence under Section 304(ii) IPC. The Court below considering the materials dismissed the petition filed by the petitioners holding that there are sufficient grounds available to proceed against the accused.

4. Considering the material available on record the Court below dismissed the application. Now, challenging the above said order of dismissal, the present revision has been filed.

5. Heard Mr.N.Manokaran, the learned counsel appearing for the petitioners and Mr.R.Ravichandran, learned Government Advocate(Crl.Side), appearing for the respondent and perused the

materials available on record.

6. The learned counsel appearing for the petitioners would contend that the petitioners does not have any knowledge that the act of the petitioners is likely to cause death. Hence, the act of the petitioners will not attract the provision of Section 304(ii) IPC and there is no sufficient material available to proceed against them for the above offence. In support of his contention, the learned counsel appearing for the petitioners relied upon the Judgment in NARESH GIRI Vs. STATE OF M.P reported in 2008(1) SCC 791 and another Judgment in MOHAMMED AYNUDDIN ALIAS MIYAM Vs. STATE OF A.P. Reported in 2000 (7) SCC 72.

7. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent would contend that the first petitioner/A-1 learning driving and he did not possess any valid driving license, went into the school play ground and driving the vehicle in a rash and negligent manner and A-2 also does not possess any license to teach driving to the first petitioner and both of them have a knowledge that their act is likely to cause death. In the above circumstances, there are sufficient grounds available against the petitioners to the charge under Section 304(ii) IPC and there is no illegality or irregularity in the order passed by the Court below.

8. I have considered the rival submissions.

9. Section 304 IPC provide for punishment for culpable homicide not amounting to murder, which reads as follows:-

"304. Punishment for culpable homicide not amounting to murder:-

Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death ,but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 304 IPC has two parts. To attract the offence under the first part of Section 304 IPC, the prosecution has to prove the death of a person, such death was caused by the act of the accused and the accused had an intention to cause death or cause such bodily injuries as is likely to cause death of a person. To bring home the offence under Part II of Section 304 IPC, the prosecution has to prove the death of a person in question and death was caused by the act of the accused and the accused has knowledge that his act is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

10. Now, the question is whether there is sufficient ground available to proceed against the petitioner under Section 304 (ii) IPC. The case of the prosecution is that at the time of accident, the first accused was learning driving and the second accused taught him to drive the vehicle in the school play ground, where the students are used to play, both the deceased and injured are students studying in the school and after attending their special class, they are walking along the school play ground, at that time, the first petitioner/A-1 who was driving the vehicle in a rash and negligent manner dashed against them and caused death of one of the student and caused serious injuries to another student. It is not a case of mere rash and negligent driving alone, but they are aware of the risk that driving the vehicle in the school play ground will lead to untoward thing and their act is likely to cause death may be attributed with the knowledge of the consequence, hence the act will amounts to culpable homicide not amounting to murder.

11. The Hon'ble Supreme Court in NARESH GIRI Vs. STATE OF M.P reported in 2008(1) SCC 791, has held as follows:-

"If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide.

12. In another Judgment, the Hon'ble Supreme Court in LISTER ANTHONY PAREIRA Vs. STATE OF MAHARASHTRA reported in 2012(8) SCC 684, has held as follows:-

''41. Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law - in view of the provisions of the IPC - the cases which fall within last clause of Section 299 but not within clause 'fourthly' of Section 300 may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II IPC. Section 304A IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.

42. A person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under Section 304 Part II IPC.''

13. It is well settled principle of law that at the stage of framing of charges, the Court is not concern with proof but with a strong suspicion that the accused has committed an offence, which is put to trial could prove him guilty. The Court has to see that the material on record on and the facts would be compatible with the innocence of the accused are not. The final test of guilt is not to be applied at this stage. The

Hon'ble Supreme Court in STREE ATYACHAR VIRODHI PARISHAD Vs. DILIP NATHUMAL CHORDIA AND ANOTHER reported in 1989 (1) SCC 715, has held as follows:-

"Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The ground in the context is not a ground for conviction, but a ground for putting the accused on trail. It is in the trial, the guilt or the innocence of the accused will be determined and not

at the time of framing of charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with crime."

14. In the instant case, there are sufficient grounds available against the petitioners to proceed against them for the offence under Section 304(ii) IPC., as the petitioners have knowledge that their act of driving a vehicle in the school play ground will lead to untoward thing and this act will likely cause death or cause bodily injury as it likely to cause death. The Court below after considering the material available on record, dismissed the petition filed by the petitioners, and I find no illegality or irregularity in the order passed by the Court below.

15) So far as the judgment relied upon by the learned counsel appearing for the petitioners, those judgments are not applicable to the facts of this case. The Judgment reported in 2008 (1) SCC 791(supra), wherein the Hon'ble Supreme Court has held that a person acting with a knowledge that doing an act which likely to cause a person's death then it is culpable homicide. Hence, the above judgment is not applicable to the case of the petitioner but it is against the petitioners. In another judgment relied on by the learned counsel appearing for the petitioners reported in 2000(7) SCC 72,(supra), it is the case where, while a passenger boarding a bus, the bus moved

forward and the deceased fell down from the bus and the rear wheel of the bus ran over, in the circumstances, the Hon'ble Supreme Court has held that no presumption of negligence can be drawn against the driver of the bus. Hence, the said judgment is also not applicable to the facts of this case. In the above circumstances, there is no merit in the criminal revision case and the same is liable to be dismissed.

16. In the result, the criminal revision case is dismissed. The order passed in C.M.P.No.235 of 2016 in S.C.No.91 of 2016 dated 19.08.2016 on the file of the learned Sessions Judge, Mahalir Neethi Mandram, Fast Track Court, Erode is confirmed. Consequently, connected M.P. is closed. The trial Court is directed to conduct trial and dispose the matter, on its own merits, without reference to any of the observation made in the criminal revision.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahalir Neethimandram,
Fast Track Court,
Erode.

2.The Inspector of Police,
Thalavadi Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Manokaran, Advocate, S.R.No.17660

Cr1.R.C.No.1122 of 2016

RR(CO)
RS(07/04/2017)