

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-1713-2018 (O&M)
Date of Decision:- 12.7.2019

Suresh ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Surender Saini, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court challenging order dated 9.4.2018, passed by learned Additional Sessions Judge, Sonapat, whereby the learned trial Court has ordered for framing of charges for offence under Section 304 IPC and under Section 25 of the Arms Act, against the petitioner.
2. The FIR in the present case was lodged at the instance of Ishwar, wherein it has been alleged that there was a marriage in his neighborhood on 23.11.2017. Ankush, a son of his relative Manoj and some other of his relatives had also come there to attend the

marriage. At about 9.30 pm while music was being played by the DJ, petitioner-Suresh was firing shots in the air while carrying a weapon in his hand. It is alleged that Ankush who was standing on the roof listening to the music, played by DJ, was hit on the head by shot fired by petitioner-Suresh and although he was rushed to PGI Rohtak, but he succumbed to his injuries.

3. Pursuant to investigation of the case, a challan was presented against accused Suresh. The learned trial Court vide impugned order dated 9.4.2018 proceeded to frame charges for offence under Section 304 IPC and Section 25 of Arms Act.
4. Learned counsel for the petitioner has submitted that no offence under Section 304 IPC can be said to be made out as there was no intention on part of the petitioner to cause death of Ankush and that at best it would be a case of a negligent conduct.
5. I have heard the learned counsel for the petitioner. Section 299 and 300 of IPC which defines culpable homicide and murder read as follows:

“299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1.— A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.— The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.”

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) If it is done with the intention of causing 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—

(Fourthly) If the person committing the act knows that it 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 as aforesaid.”

6. A perusal of the aforesaid provisions show that it is not just intention which would bring the act as like in the present case within the mischief of culpable homicide but even in case an act is done with

the knowledge that the same is likely to lead to causing of death would also attract an offence of culpable homicide.

7. In the present case, no doubt it may be said that the petitioner did not have any intention to kill Ankush or perhaps did not even know the deceased, but his act of firing in the air with gun without any valid reason would certainly entail risk of somebody present nearby being hit by such shot as has happened in the present case.
8. In view of the aforesaid position, especially bearing in mind that the only question before the trial Court concerned was as to whether there are sufficient grounds to frame charges or not, in my opinion, no infirmity can be found in the impugned order and the same is upheld.
9. There is no merit in this revision petition and the same is hereby dismissed.
10. It is however clarified that none of the observations made above shall be construed to be an expression on merits of the main case and the trial Court shall proceed with the trial and decide the issues concerned independently on the basis of evidence that may be led before it.

July 12, 2019

mohan

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No