

25.03. 2022
item No.7
n.b.
ct. no. 34

CRR 1956 of 2017
+
IA No. CRAN 1 of 2017(Old No. CRAN 3596 of 2017)
+
CRAN 3 of 2017 (Old No. CRAN 4951 of 2017)
+
CRAN 5 of 2018 (Old No. CRAN 771 of 2018)
+
CRAN 9 of 2019 (Old No. CRAN 681 of 2019)
+
CRAN 10 of 2019 (Old No. CRAN 1875 of 2019)
+
CRAN 12 of 2019 (Old No. CRAN 4113 of 2019)

Dr. Pradip Kr. Barma & Ors.
Vs.
State of West Bengal & Anr.

Mr. Sekhar Basu, Sr. Adv.
Mr. Raundeb Sen Gupta,
Mr. Jeenia Rudra,
Mr. Debasish Mukhopadhyay
... for the Petitioners
Mr. Saswata Gopal Mukherjee, Ld. P. P.
Mr. Sudip Ghosh
Mr. Apurba Kumar Dutta
.. for the State.
Mr. Biswajit Manna
.... For the Opposite party no.2

The present proceedings being Kotwali Police Station Case No.228 of 2017 dated 11.04.2017 was registered for investigation under Section 304 of the Indian Penal Code, 1860 read with Sections 29(2)/30 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017.

Mr. Mukherjee, Learned Public Prosecutor appearing for the State submits two reports during the pendency of the

proceedings. It has been informed before this Court that the Investigating Officer of the case has investigated the case as per the orders passed by this Court. The case was initiated in the year 2017 and the police authorities till date could not come to a conclusion because of the present petitioner challenging the proceedings after the case was registered under Section 304 of the Indian Penal Code.

Mr. Basu, learned senior advocate appearing for the petitioner submits that prima facie the allegations made against the person/petitioner do not call for registration of a case under Section 304 of the Indian Penal Code.

Mr. Manna, learned advocate appearing for the opposite party no.2 submits that having regard to the manner in which used a non-functioning Ventilator was used, it can be presumed that it was within the knowledge of the Nursing Home authorities that the usage of the same will not in any manner have a remedial effect on the patient leading to the death of the patient. As such, the learned advocate submits that such overt act on the part of the Nursing Home authorities would draw the rigors of Section 304 of the Indian Penal Code.

The present case is at the investigation stage and this Court will not enter into the zone whether an offence under Section 304 or Section 304A of the I.P.C. has been made out.

However, having regard to the judgment of the Hon'ble Supreme Court in *Mahadev Prasad Kaushik Vs. State of U.P.* reported in (2008) 14 SCC 479 this Court is of the opinion that the

paragraphs 22, 23, & 24 of the said judgment are relevant, which are set out as follows:

“22. Before Section 304 can be invoked, the following ingredients must be satisfied:

- (i) the death of the person must have been caused;
- (ii) such death must have been caused by the act of the accused by causing bodily injury;
- (iii) there must be intention on the part of the accused;
 - (a) to cause death; or
 - (b) to cause such bodily injury which is likely to cause death (Part I);
- (iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).

23. Section 304-A was inserted by the Penal Code (Amendment) Act, 1870 (Act 27 of 1870) and reads thus:

“304-A. Causing death by negligence.- Whoever caused the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300 IPC and covers those cases where death has been caused without intention or knowledge. The words “not amounting to culpable

homicide” in the provision are significant and clearly convey that the section seeks to embrace those cause where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.

24. There is thus distinction between Section 304 and Section 304-A. Section 304-A carves out cause where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 IPC. In other words, Section 304-A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the “motivating force” of the act complained of, Section 304-A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.”

The above judgment should be taken into consideration by the Investigating Authorities before filing their report under Section 173 of the Code of Criminal Procedure.

Memo of Evidence and the report so submitted by the learned Public Prosecutor be kept with the record.

The revisional application being, CRR 1956 of 2017 is disposed of.

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)