

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 353 of 2018

With

CRAN 1 of 2019 (Old No CRAN 2421 of 2019)

Sri Dipak Kumar Sen & Anr.

Vs.

The State of West Bengal & Ors.

For the Petitioners :Mr. Bikash Shaw, Adv.

For the Opposite party no. : Suman Banerjee, Adv.
2 to 9 & 11

For the State :Mr. Binay Kumar Panda, Adv.
Ms. Puspita Saha, Adv.

Heard on : 20.07.2023, 10.08.2023,
31.08.2023, 15.09.2023

Judgment on :22nd September, 2023

Bibhas Ranjan De, J.

1. Order dated 6th July, 2017 passed by Ld. Additional Chief Judicial Magistrate, Chandernagar, Hooghly in connection with Chandarnagar Police Station Case no. 75 of 2017 dated 9th May, 2017 under Section 304A of the Indian Penal Code, is challenged by this revisional application.

2. Ld. Additional Chief Judicial Magistrate, by his order dated 06.07.2017 recorded his observation as quoted below:-

“.....When death was caused by an act with the intention of causing death or with the knowledge that by such act he was likely to cause death, section 304 I.P.C. will be attracted.

Contd. order dated 06.07.2017.

In Shankar Narayan Vs. State AIR 2004 SC1966 it has been held that section 304A I.P.C applies to cases where death is caused by doing rash or negligent act but it is not applicable where the act is done with intention or knowledge to cause death.....”

3. The case was initiated on a written complaint lodged by one Dipak Kumar Sen (father of the deceased) addressed to the officer in charge Chandannagar Police Station, Hooghly on

09.05.2017 alleging *inter alia* that on that day at about 7.00 a.m. his son Ayan Sen since deceased (aged about 18 years) had been to Chandannagar Swim Centre, Barasat, GT Road, Chandannagar, Hooghly for learning swimming activities. At about 8.00 a.m. complainant came to know that his son got drowned in the swimming pool and was hospitalized. It was further alleged that his son had primary knowledge of swimming but such incident happened due to poor infrastructure.

4. On receipt of that written complaint Chandannagar Police Station Case No. 75 of 2017 dated 9th May 2017 under Section 304 A was registered.

5. During investigation, Investigating Officer made a prayer before the court on 20th June, 2017 stating *inter alia* as follows:-

“.....In course of investigation it is revealed that the said Swim Center has got no infrastructure of a proper swimming center. Being the trainer and the authority it is obvious that they must have got knowledge that without proper infrastructure, safety and security measures the said swimming pool is in danger to the life of trainees.....”

- 6.** Ld. advocate, Mr. Bikash Shaw, on behalf of the petitioner has submitted that the investigating officer collected the evidence and made a prayer suggesting that accused had knowledge and intention to cause death of son of the complainant and he has further submitted that swimming centre did not comply with any of the parameters viz water quality, competent swim coach, life-buoy, life jackets, oxygen cylinder etc. Thereby, Mr. Shaw has submitted that there was enough knowledge of the authority of the swimming center that such poor infrastructure might cause death of any of the trainees in the swimming pool. In support of his contention he referred to the prayer of the Investigating Officer. Before parting, Mr. Shaw has submitted that none of the trainers present over there could rescue and save life of son of the complainant.
- 7.** Ld. Advocate, appearing on behalf of the opposite parties relied on the evidences collected by the Investigating Officer in course of investigation.
- 8.** The Hon'ble Apex Court in dealing with cases of similar nature has already through a catena of decisions further authenticated the settled principle of law that though the term "negligence" has not been defined in the Code, it may be stated

that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.

- 9.** On careful perusal of the case diary particularly the statement of witnesses recorded under Section 161 of Code of Criminal Procedure (for short CrPC) presence of intention or knowledge to cause death cannot be inferred at such prima facie stage of the proceeding.
- 10.** Culpable homicide not amounting to murder deals with knowledge or criminal intention. Here in this case, the evidence collected so far does not indicate any ingredients of offence under Section 304 of the Indian Penal Code and that cannot be ascertained without evidence during trial albeit there was gross negligence on the part of the swimming pool authority and trainers also. Moreover, in case of any ingredients under Section 304 of IPC is subsequently revealed from the evidence during trial, there is scope of addition/alteration of charge invoking Section 216 of the CrPC.

- 11.** In the aforesaid view of the matter, I find no reason to interfere with the order impugned exercising jurisdiction within the meaning of Section 482 of the CrPC.
- 12.** The revision application being no. 353 of 2018 stands dismissed.
- 13.** Interim order, if there be any, stands vacated and all interim application, if pending, stand disposed of.
- 14.** Case diary be returned.
- 15.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 16.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]