



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2356 OF 2024

YUVRAJ LAXMILAL KANTHER & ANR. APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave is directed against the judgment and order dated 02.11.2017 passed by the High Court of Judicature at Bombay (briefly ‘the High Court’ hereinafter) in Criminal Revision Application No. 269 of 2017.

2. By the aforesaid judgment and order dated 02.11.2017, the revision application filed by the appellants assailing the order dated 01.04.2017 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 749 of 2014 came to be dismissed.

2.1. Be it stated that by the aforesaid order dated 01.04.2017, learned Additional Sessions Judge, Pune dismissed the discharge applications filed by the appellants being Exhibit Nos. 6 and 10 in Sessions Case No.749 of 2014.

3. Appellants are Yuvraj Laxmilal Kanther and Nimesh Pravinchandra Shah.

4. Appellant No. 1 was doing interior decoration of the concerned shop in Pune on contract basis. Appellant No. 2 was the Store Operation Manager of M/s. Intergold Gems Private Limited which had taken the concerned shop on lease.

4.1. On 27.09.2013, at about 09:00 PM, the work of decoration of the front side of the shop was being undertaken by two employees of appellant No.1, Salauddin Shaikh and Arun Sharma. It is alleged that both the employees viz. Salauddin Shaikh and Arun Sharma were provided with an iron ladder and they were working on the sign board which was approximately at a height of 12 feet from the ground level. While they were working on the sign board, they were struck by electricity as a result of which they got electrocuted and fell down. Due to the fall, they suffered head injuries as

well as injuries on their arms. They were taken to Pune Hospital and Research Centre where they were declared dead on arrival.

4.2. Accidental reports bearing Nos. 67/23 and 68/23 under Section 174 of the Code of Criminal Procedure, 1973 (CrPC) were registered.

4.3. After more than two months, on 04.12.2013, FIR was lodged at Vishrambag Police Station, Pune by the Police Sub-Inspector Shri S.G. Patil against the appellants which was registered as FIR No. 316/2013. It was stated that the appellants did not provide any safety equipments like belt, helmet, rubber shoes etc to the two deceased employees. According to the investigating officer, the two accused persons had not taken proper care and caution by providing safety shoes, safety belt etc to the two employees though the work assigned to them was quite risky. Informant opined that both the appellants were responsible for the unnatural death of the two employees since they had knowledge that there was risk to the lives of the employees. Therefore, the first informant summed up by saying that both the accused

persons were responsible for the unnatural death of the two deceased persons. Accordingly, it was alleged that appellants had committed offences under Sections 304 and 304A IPC.

4.4. On 04.12.2013 itself both the appellants were arrested in connection with the aforesaid FIR. They were subsequently released on the same day. After completion of investigation, police submitted chargesheet in which the two appellants were arrayed as accused. Appellants were chargesheeted for committing an offence under Sections 304A/182/201 read with Section 34 IPC.

4.5. Learned Judicial Magistrate First Class, Pune, before whom the chargesheet was filed, was of the view that there were material to attract Section 304 Part II IPC. Since it became a sessions triable case, the same was committed to the Court of Additional Sessions Judge, Pune where it was registered as Sessions Case No.749 of 2014.

5. Appellants filed Exhibit Nos. 6 and 10 applications in the Court of Additional Sessions Judge, Pune seeking their discharge under Section 227 of CrPC.

5.1. Contention of the appellants in the discharge applications was that there were no materials to show that the appellants had committed the alleged offence. Ingredients of the alleged offence charged were not even *prima facie* established against the appellants. Charge levelled by the prosecution against the appellants was groundless. FIR was totally silent about any overt act of the appellants. Appellants were not present at the place of occurrence when the incident took place. There was no negligence on the part of the appellants; not to speak of having any knowledge or intention to cause the death of the two employees or such bodily injury as would likely cause their death.

5.2. Even if all the statements of the witnesses were considered and accepted as correct, the trial would not end in conviction of the appellants. Going ahead with the trial would be a futile exercise. There were no materials to show that appellants had committed the offence as charged. In the circumstances, appellants sought for discharge as contemplated under Section 227 of the CrPC.

6. Learned Additional Sessions Judge, Pune *vide* his order dated 01.04.2017 dismissed both the discharge applications. He held that the two appellants were certainly not oblivious of the fact that they had not provided safety gear to the employees which was certainly dangerous to them as they got exposed to electrocution risk. Learned Additional Sessions Judge was also of the view that there was much force in the argument advanced on behalf of the prosecution that there was sufficient material justifying framing of charge against the accused for the offence punishable under Section 304 Part II read with Section 34 IPC. In that view of the matter, the discharge applications were dismissed.

7. Aggrieved by the aforesaid decision, appellants preferred Criminal Revision Application No. 269 of 2017 before the High Court. After going through the materials on record and after hearing the parties, High Court was of the view that there was strong suspicion against both the appellants for committing the offence for which they were charged. It could not be said that there were no grounds to proceed against the appellants. No case for interference was

made out. Hence, the revision petition was dismissed *vide* the judgment and order dated 02.11.2017.

8. Assailing the aforesaid judgment and order dated 02.11.2017 of the High Court, appellants preferred the related SLP(Crl.) No. 9928 of 2017. By order dated 09.01.2018, this Court had issued notice and granted stay of further proceedings in Sessions Case No. 749 of 2014 pending on the file of the Additional Sessions Judge, Pune.

8.1. The matter was heard on 30.04.2024 when leave was granted. Hence, the appeal.

9. Learned counsel for the appellants submits that both the Trial Court and the High Court fell in error in rejecting the discharge applications filed by the appellants. Though the prosecution had submitted chargesheet alleging commission of offence under Sections 304A/182/201 IPC read with Section 34 IPC, learned Magistrate while committing the case to the Court of Sessions concluded that there was material to invoke Section 304 Part II IPC. Trial Court took the view that there is sufficient material justifying framing of charge against the appellants for the offence

punishable under Section 304 Part II read with Section 34 IPC. Interestingly, High Court proceeded on the basis that appellants were accused of committing offences under Sections 304 and 304A IPC while dismissing the revision application of the appellants.

9.1. Learned counsel submits that no offence is made out against the appellants under Section 304 Part II IPC or even under Section 304A IPC. The two deceased employees of appellant No. 1 were working on the sign board as part of cleaning the front side of the shop. It was an accident that they got electrocuted and fell down because of which they suffered multiple injuries leading to their death.

9.2. The only reason for filing of chargesheet against the appellants is that according to the prosecution, appellants had not provided safety equipments to the two deceased employees such as rubber shoes, safety belt etc. He submits that non-furnishing of such equipments would not make it a criminal offence.

9.3. Adverting to the order of the High Court, learned counsel submits that the High Court proceeded on the basis

that it was expected from a prudent person to have provided the deceased employees wooden scaffolding instead of an iron ladder. Therefore, by applying the test of a prudent person, High Court found shortcomings on the conduct of the appellants. Therefore, it observed that a strong suspicion could be inferred against the appellants that they had knowledge that by asking the two deceased employees to work in the manner in which they did would cause their death.

9.4. Learned counsel submits that such observations by the High Court are way off the mark and cannot justify initiation of criminal proceedings against the appellants. Neither any negligent or rash act was committed by the appellants nor any specific overt act can be attributed to the appellants. It was a case of sudden accident.

9.5. Learned counsel also submits that appellants have paid compensation to the legal heirs of the two deceased employees to the extent of Rs. 5,91,180.00 (Arun Sharma) and Rs. 5,20,584.00 (Salauddin Shaikh). Appellant No. 1 has also provided employment to the brother of the deceased

Salauddin Shaikh. That apart, educational expenses of the children of Arun Sharma have been taken care of by appellant No. 1.

9.6. In that view of the matter, learned counsel for the appellants submits that there is no material to justify launch of criminal trial against the appellants. Therefore, the appellants should be discharged.

10. *Per contra*, learned counsel for the respondent submits that appellants knew fully well about the risk that the two deceased employees had to undertake to do the work assigned to them. Yet the appellants did not provide any safety equipments to them. The two deceased employees sustained electric shock and fell down because of which they suffered multiple injuries causing their death. There is, thus, a strong *prima facie* case made out against the appellants.

10.1. Learned counsel submits that there is sufficient material to justify framing of charge against the appellants for the offence punishable under Section 302 Part II IPC read with Section 34 thereof. In any case, police had filed the charge-sheet alleging commission of offence under Section

304A IPC by the appellants. There are sufficient materials to substantiate such a charge. In this connection, learned counsel has placed reliance on the decision of this Court in *Keshub Mahindra Vs. State of M.P.*¹

10.2. Finally, learned counsel for the respondent submits that there is no merit in the appeal and, therefore, the same should be dismissed.

11. Submissions made by learned counsel for the parties have received the due consideration of the court.

11.1. At the outset, it would apposite to deal with the relevant legal provisions.

12. We have noted above that the appellants have been charged for committing offence under Section 304 Part II IPC read with Section 34 IPC. Since Section 34 IPC covers common intention, the substantive charge against the appellants is under Section 304 Part II IPC which reads as under:

Punishment for culpable homicide not amounting to murder –

¹ (1996) 6 SCC 129

Whoever commits culpable homicide not amounting to murder shall be punished 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.

12.1. The ingredients constituting an offence under Section 304 Part II IPC are as follows:

- (i) he must commit culpable homicide not amounting to murder;
- (ii) the act must be done with the knowledge that it is likely to cause death;
- (iii) but such act is done without any intention to cause death or to cause such bodily injury as is likely to cause death.

12.2. Therefore, the first important expression is 'culpable homicide not amounting to murder'. Culpable homicide is defined in Section 299 IPC. It says that 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.

12.3. All culpable homicides are murders except in the cases excepted under Section 300 IPC. Thus, except the cases specifically exempted under Section 300 IPC, all other acts within the meaning of Section 299 IPC would amount to committing the offence of culpable homicide. However, what is important to note is that for committing the offence of culpable homicide, a positive act must be done by the doer with the intention that such act would cause death or cause such bodily injury as is likely to cause death or he having the knowledge that by such an act, death may be caused. What, therefore, is significant is that the doer of the act must have the intention of causing death or the intention of causing such bodily injury as is likely to cause death or has the knowledge that by doing such an act he is likely to cause death. Therefore, to commit the offence of culpable homicide, intention or knowledge is of crucial importance.

12.4. Coming back to Section 304 Part II IPC, we find that the said section would be attracted if anyone commits culpable homicide not amounting to murder 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. Therefore, the requirement of Section 304 Part II IPC is that the doer must have the knowledge that the act performed is likely to cause death or to cause such bodily injury as is likely to cause death but without any intention to cause death. Thus, the basic ingredient of Section 304 Part II IPC is presence of knowledge and absence of intention. The doer must have the knowledge that the act performed by him would likely cause death etc but there should not be any intention to cause death.

13. This being the legal framework, let us now deal with the charge against the appellants taking the same as correct. According to the prosecution and accepted by the Trial Court and the High Court, the two accused persons had not taken proper care and caution by providing safety shoes, safety belt etc to the two employees though they were asked to perform the job of working on the sign board as part of decorating the front side of the shop which was approximately at a height of 12 feet from the ground level. The accused persons had provided only an iron ladder to the two employees but while working they were struck by

electricity as a result of which they suffered electrocution and fell down. They suffered multiple injuries which led to their death. Therefore, both the accused persons were declared to be responsible for the unnatural death of the two deceased employees.

14. Even if we take the allegation against the appellants as correct, we are afraid no *prima facie* case can be said to have been made out against the appellants for committing an offence under Section 304 Part II IPC. From the record of the case, it is evident that there was no intention on the part of the two appellants to cause the death or cause such bodily injury as was likely to cause the death of the two deceased employees. It cannot also be said that the appellants had knowledge that by asking the two deceased employees to work on the sign board as part of the work of decoration of the frontage of the shop, they had the knowledge that such an act was likely to cause the death of the two deceased employees. As such, no *prima facie* case of culpable homicide can be said to have been made out against the appellants. If that be so, the subsequent requirement of having knowledge that the act was likely to

cause the death but not having any intention to cause death would become irrelevant though we may hasten to add that nothing is discernible from the record of the case that the appellants had the knowledge that by asking the two employees to work on the sign board would likely cause their death or cause such bodily injury as is likely to cause their death.

15. Therefore, the basic ingredients for commission of offence under Section 304 Part II IPC are absent in the present case.

16. Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the

prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, court is only required to consider as to whether there are sufficient materials which can justify launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on benefit of doubt or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused.

17. Learned counsel for the respondent has placed reliance on a decision of this Court in *Keshub Mahindra* (supra). However, on going through the aforesaid judgment, we are of the view that facts in *Keshub Mahindra* and facts in the present case are poles apart. *Keshub Mahindra* arose

out of the in-famous Bhopal Gas tragedy. A highly dangerous and toxic gas escaped from a tank in the Bhopal factory belonging to Union Carbide India Limited. As a result of such leakage, 3828 human beings lost their lives; 18922 suffered permanent injuries; 7172 suffered temporary disablement; 1313 suffered temporary disablement caused by permanent injuries; and permanent partial disablement was suffered by 2680 persons. While 40 human beings suffered from permanent total disablement, a total of 2544 animals died. Criminal proceedings were initiated against the company and officials belonging to the company. Charges were framed under Sections 304 Part II/324/326/429 IPC read with Section 35 IPC. Some of the accused persons challenged such framing of charge before the High Court of M.P. at Jabalpur. However, the High Court dismissed the criminal revision application whereafter the matter came up before this Court. In *Keshub Mahindra* (supra), this Court upon perusal of the material on record held that charges under Section 304 Part II, 324, 326 and 429 of IPC were not attracted at all. Framing of such charges against the concerned accused persons fell short of even

prima-facie case. It was observed that mere act of running a plant as per permission granted by the authorities would not be a criminal act. This Court held that:

20.Consequently in our view taking the entire material as aforesaid on its face value and assuming it to represent the correct factual position in connection with the operation of the plant at Bhopal on that fateful night it could not be said that the said material even *prima facie* called for framing of a charge against the accused concerned under Section 304 Part II IPC on the specious plea that the said act of the accused amounted to culpable homicide only because the operation of the plant on that night ultimately resulted in deaths of a number of human beings and cattle.

17.1. However, considering the gravity of the incident, this Court exercised power under Article 142 of the Constitution of India and examined the question as to whether the material led by the prosecution could *prima facie* support a charge under Section 304A IPC against the concerned accused persons. This Court thereafter opined as under:

22.It cannot be gainsaid that the voluminous evidence led by the prosecution in this connection at least *prima facie* shows that the accused concerned

who operated the plant on that fateful night at Bhopal could be alleged to be at least guilty of rash and negligent act in the way this highly volatile substance MIC was handled by them and which ultimately escaped in vaporous form and extinguished the lives of thousands of human beings and animals apart from causing serious bodily injuries to thousands of others.

* * * * *

However for framing charge under Section 304-A on the aforesaid material it cannot be said that the said material even prima facie did not point out the culpability of the accused concerned in running a defective plant having a number of operational defects and in being prima facie guilty of illegal omissions to take safety measures in running such a limping plant on that fateful night which resulted into this colossal tragedy. The aforesaid conclusion of ours, therefore, would make out a prima facie case against accused 5, 6, 7, 8 and 9 who were in actual charge of running of the Bhopal Plant and would require them to face the trial for charge under Section 304-A of the IPC.

17.2. The aforesaid conclusion of this Court and the consequential directions issued was in exercise of power under Article 142 of the Constitution of India considering the gravity and magnitude of the incident.

17.3. In so far facts of the present case is concerned, the two deceased employees of appellant No. 1 were undertaking

the work of decoration of the front side of the shop. As part of the said work, they were working on the sign board which was approximately at a height of 12 feet from the ground level. For this purpose, they were provided with an iron ladder. While working on the sign board, they were struck by electricity as a result of which they got electrocuted and fell down resulting in multiple injuries leading to their death. It was purely accidental. On these basic facts, no *prima facie* case can be said to be made out against the appellants for committing an offence under Section 304A IPC, not to speak of Section 304 Part II IPC. In any case, the Trial Court only considered culpability of the appellants *qua* Section 304 Part II IPC as the committing Magistrate had committed the case to the Court of Sessions confining the allegations against the appellant to Section 304 Part II IPC and not Section 304A IPC.

17.4 Therefore, *Keshub Mahindra* (supra) can be of no assistance to the respondent.

18. That being the position and having regard to the discussions made above, we are of the view that both the

Trial Court and the High Court fell in error in rejecting the discharge applications of the appellants. For the reasons stated above, the order of the Trial Court dated 01.04.2017 and that of the High Court dated 02.11.2017 are hereby set aside and quashed. Consequently, the discharge applications being Exhibit Nos. 6 and 10 in Sessions Case No. 749 of 2014 are hereby allowed. Appellants are discharged from Sessions Case No. 749 of 2014. Consequently, Criminal Appeal No. 2356 of 2024 is allowed.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
MARCH 07, 2025.**