

2009 SCC OnLine Kar 537 : (2010) 5 Kant LJ 436 : (2010) 2 AIR Kant R 440 :  
2010 Cri LJ 2672

In the High Court of Karnataka at Bangalore  
(BEFORE ARALI NAGARAJ, J.)

Pradeep Kumar  
*Versus*

State by Police of Basaveshwaranagar Police Station, Bangalore  
Criminal Petition No. 2143 of 2006  
Decided on November 26, 2009

Penal Code, 1860 — Ss. 304 Pt. II and 304-A — Death by inhalation of carbon monoxide — Commission of 'act' by the accused — Whether established — Held, though the "act" includes "omission" also, the omission should be of the doing of such an act as could be expected of a prudent person under given circumstances and such omission should be intentional or negligent one — Sitting in the car, with all its windows closed and switching on the engine of the car and the air-conditioner, either for taking some rest or talking with anyone, by parking the car, with a view to have some privacy, is not uncommon — Thus, the accused could not be said to have committed any 'act' the consequence of which was the inhalation of carbon monoxide by the deceased, which ultimately resulted in death — Act of the accused was only the switching on of the engine and the air-conditioner, and no culpable negligence could be attributed to the accused in doing said acts — Further, in order to attribute the knowledge required for the offence under S. 304 Pt. II, the prosecution had to establish that he switched on the engine and the air-conditioner while sitting with the deceased inside the car, fully knowing that the engine of the car would emit carbon monoxide and the person inhaling the same would die — However, the same was not established, and the petitioner held to deserve a discharge under S. 227 CrPC — Further, the accused cannot be held to have negligently caused the deceased to inhale carbon monoxide, so as to make him liable to be punished for the offence under S. 304-A — Instant petition, thus, allowed — Criminal Procedure Code, 1973, Ss. 227 and 482

(Paras 12, 14, 16, 17 and 19)

#### ORDER

1. The accused in Sessions Case No. 161 of 2005 pending on the file of the learned Presiding Officer (Sessions Judge), FTC-VI, Bangalore City has filed the present petition under Section 482 of the Criminal Procedure Code, 1973 seeking quashing of the entire proceedings in the said case wherein he is charge-sheeted by the police of Basaveshwaranagar Police Station, Bangalore City for the offence under Section 304, Part II of the Penal Code, 1860.



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2. Stated in brief the case of the prosecution as alleged in the charge-sheet submitted by the said police is as under.

- (a) On 23-8-2003 at about 8.30 a.m., the petitioner-accused took the deceased Kum. Madhuriswamy and her younger sister C.W. 8-Mythriswamy, the daughters of B.T. Chidanandaswamy (C.W. 6), from their residence at No. 13, M.S. Layout, Chiraganahalli Extension, Kankapur Road, Bangalore City, in his Santro Car bearing registration No. KA-02-N-8341 and dropped C.W. 8-Kum.

Mythriswamy near the residence of her grandmother at Mahalakshmiपुरa and then took the deceased Madhuriswamy only to his residence at No. 193/A, 3rd 'D' Cross, 2nd Block, 3rd Stage, Basaveshwaranagar, Bangalore City. After he reached his said residence in his said car along with the deceased, the accused parked the car in the car shed and closed the windows and doors of the car shed, also closed the window glasses of the car and sat in the car along with the deceased talking to each other.

- (b) Thereafter, at about 1.45 p.m., while the accused and the deceased were talking to each other by sitting so in the said car, the accused started the engine of the car and also started the air conditioner. Some time thereafter, as a result of keeping of the engine of the car running, the carbon monoxide gas emitted from the car was inhaled by the deceased and also the accused. Consequently, the accused felt breathlessness. Therefore, he came out of the car and the shed by leaving the deceased inside the car, went inside his house, took water from the fridge and, after spending some time in his house, he returned to the car which was parked in the shed.
- (c) Then, he (accused) noticed that the deceased was unconscious. Instead of taking the deceased immediately to the hospital for treatment, he came out of the car shed spoke to his friends and his father on his mobile phone and then, on the advice of the said persons, he took the deceased in his said car to Manipal North Side Hospital at about 5.40 p.m. The doctor in the said Hospital, namely C.W. 20-Dr. Naveen Reddy, after examining the deceased, declared that she was already dead and he advised the accused to take her to M.S. Ramaiah Hospital. Accordingly, the accused, with the help of C.W. 13-Samuel, took the deceased in his said car to M.S. Ramaiah Hospital. The doctor in the said latter Hospital, namely, C.W. 2, Dr. Satish Verma examined the deceased and declared that she was dead.
- (d) The Medical Officer, namely C.W. 22-Dr. J. Kiran, who conducted P.M. Examination on the dead body of the deceased, has given his opinion that the cause of death of the



deceased was inhalation of carbon monoxide. The accused, despite himself feeling breathlessness as a result of inhalation of the gas emitted from the car, and knowing that the deceased was also suffering from the same breathlessness, did not take the deceased to the hospital for the treatment immediately. Therefore, the accused became responsible for the death of the deceased though he did not intend to cause her death and thus he committed an offence punishable under Section 304, Part II of IPC.

3. Sri H.S. Chandramouli, the learned Counsel for the petitioner-accused, strongly contended that even if the above case of prosecution, as alleged in the charge-sheet and supported by the entire material collected by the Investigating Officer during the investigating of the case is taken at its face value without subjecting any of the charge-sheet witnesses to cross-examination on behalf of the accused, it does not constitute either an offence under Section 304, Part II of IPC or any other offence punishable under any of the provisions of the Penal Code, 1860 and therefore, all further proceedings in the said sessions case deserve to be quashed. He further contended that the above case of the prosecution as stated in the charge-sheet and also the statements of charge-sheet witnesses do not disclose commission of any act by the accused causing 'inhalation of carbon monoxide' which resulted in the death of the

deceased. While contending so he further contended that since no act could be said to have been committed by the petitioner-accused, the ingredients of the offence under Section 304, Part II of IPC are not attracted and therefore, no charge could be framed against the petitioner either for the said offence or for any other offence under IPC or any other law. *Per contra*, Sri G. Balakrishna, the learned High Court Government Pleader, supporting the charge-sheet submitted by the police against the accused for the offence under Section 304, Part II of IPC, strongly contended that though the accused has not been alleged to have committed any overt act in causing 'inhalation of carbon monoxide' by the deceased while himself and deceased were inside the car, when the accused himself felt breathlessness, he should be taken to have had the knowledge that if the deceased were not taken to the hospital for immediate treatment, she might die. He further contended that the accused omitted to take her to the hospital and hence there is sufficient material to presume that the accused has committed an offence under Section 304, Part II of IPC alleged against him. He further contended that on careful reading of the allegations in the charge-sheet and also the statements of the prosecution witnesses, the report as to Narco Analysis Test to which the accused was subjected, it cannot be said that there is not sufficient ground for proceeding against the accused with his trial for the offence under Section 304, Part II of IPC for which he is charge-sheeted, on the other hand, there are grounds to presume that the accused has committed the said offence and therefore, the present



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petition seeking quashing of the entire proceedings in the said sessions case is liable to be dismissed.

4. The accused had filed an application under Section 227 of the Criminal Procedure Code, 1973 before the learned Sessions Judge seeking his discharge from the said offence and the same came to be rejected. On careful reading of grounds urged in the said petition, it could be seen that they are consistent with the above contentions taken by Sri H.S. Chandramouli, the learned Counsel for the petitioner-accused. The learned Sessions Judge, by his order dated 15-4-2006 rejected the said application.

5. As to the powers of High Court under Section 482 of Cr. P.C. in quashing the proceedings of a criminal case at the initial stage of framing the charge, Sri H.S. Chandramouli, the learned Counsel for the petitioner-accused has placed strong reliance on the decision of the Hon'ble Supreme Court in the case of *Keshub Mahindra v. State of Madhya Pradesh*<sup>1</sup>. At para 9 of the said decision, the Hon'ble Supreme Court, referring to the provisions of Sections 227 and 228 of Cr. P.C. has observed as under:

*"9. Section 227 of the Cr. P.C. lays down that, 'if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing'. On the other hand as enjoined by Section 228, 'if after such consideration and hearing as aforesaid the Judge is of opinion that there is ground for presuming that the accused has committed an offence, then subject to the procedure laid down by clauses (a) and (b) of the said section the charge shall be framed in writing against the accused'.*

(emphasis supplied)

In the case of *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja*,

(1990) 4 SCC 76 : AIR 1990 SC 1962, one of us A.M. Ahmadi, J. (as His Lordship then was) speaking for the Division Bench of this Court in this connection observed as under:

"It seems well-settled that at the Sections 227 and 228 stage *i.e.*, stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their fact value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution



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stages as gospel truth even if it is opposed to common sense or the broad probabilities of the case".

*It is also well-settled while exercising jurisdiction under Section 482 of Cr. P.C.* when the High Court is called upon to quash the charge pursuant to which proceedings at the stage of trial are pending, and even when the High Court is called upon to quash proceedings pursuant to complaint, only a *prima facie* appraisal of the allegations made in the complaint and the material in support thereof has to be done and the Court has no jurisdiction to go the merits of the allegations as that stage would come when the trial proceeds".

(emphasis supplied)

The question then is: Whether the High Court is right in its exercise of inherent power under Section 482 of Cr. P.C.? This Court, in *State of Himachal Pradesh v. Shri Pirthi Chand*, AIR 1996 SC 977 : (1996) 2 SCC 37 (Cri. A. No. 1752 of 1995, decided on November 30, 1995) held at paras 12 and 13 of SCC on pages 44 and 45 as under:

"12. *It is thus settled law that* the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigation into cognizable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is considered. *The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence, on that evidence and proceeds further with the trial.* If it reaches a conclusion that no cognizance offence is made out no further act could be done except to quash the charge-sheet. But only in exceptional cases *i.e.*, in rarest of rare cases of *Mala fide* initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint for FIR itself does not disclose at all any cognizable offence - the Court may embark upon the consideration thereof and

exercise the power".

(emphasis supplied)



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6. Further, in its decision in the case of *Keshub Mahindra*, Hon'ble Supreme Court has quoted with approval, its another earlier decision in the case of *State of Bihar v. Rajendra Agrawalla*<sup>2</sup> wherein it is observed at para No. 5 (SCC page 166) as under:

"5. It has been held by this Court in several cases that the inherent power of the Court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court, if such power is not exercised. *So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged.* At that stage it is not open for the Court either to sift the evidence or appreciate the evidence and come to the conclusion that to *prima facie* case is made out".

(emphasis supplied)

7. Further, at para 15 of the said decision *Keshub Mahindra's case*, the Hon'ble Supreme Court has further observed as under.

"Para 15. It, therefore, becomes necessary for us now to address ourselves on this moot question. As noted earlier the main charge framed against all these accused is under Section 304, Part II of IPC. So far as accused 2, 3, 4 and 12 are concerned they are also charged with offences under Sections 326, 324 of IPC and 429 of IPC read with Section 35 of IPC while accused 5 to 9 are charged substantially with these offences also. We shall first deal with the charges framed against the concerned accused under the main provisions of Section 304, Part II of IPC. A look at Section 304, Part II shows that the concerned accused can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged it is alleged that the act of the concerned accused 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 the charged offences would fall under Section 304, Part II. However, *before any charge under Section 304, Part II can be framed, the material on record must at least prima facie show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide.* However, if the material relied upon for framing such a charge against the concerned accused falls short of even *prima facie* indicating that the accused appeared to be guilty of an offence of culpable homicide Section 304, Part I or Part II would get out of the picture. In this connection we have to keep in view Section 299 of the



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Penal Code, 1860 which defines culpable homicide. It lays down 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'. *Consequently the material relied upon by the prosecution for framing a charge under Section 304, Part II must at least prima facie indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death.* The entire material which the prosecution relied upon before the Trial Court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates *prima facie* that on that fateful night when the plant was run at Bhopal it was run by the concerned accused with the knowledge that such running of the plant was likely to cause deaths of human beings. Once we reach the conclusion that the material produced by the prosecution before the Trial Court at the stage of framing of charges did not even *prima facie* connect the accused with any act done with the knowledge that by that act itself deaths of human beings would be caused the accused could not be even charged for culpable homicide and consequently there would be no question of attracting Section 304, Part II against the concerned accused on such material".

(emphasis supplied)

8. Keeping in mind the above principles, I proceed to consider the facts of the present case. In order to frame charge against the accused for the offence under Section 304, Part II of IPC, it is to be found, from the allegations in the charge-sheet and statements of the material charge-sheeted witnesses and the documents collected by the Investigating Officer during investigation:

- (i) Whether the accused did any act, which resulted in the death of the deceased?
- (ii) Whether the accused did the said act with the knowledge that by doing the said act, he was likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death?

9. On careful reading of the statements of C.W. 8-Kum. Mythriswamy, the younger sister of the deceased; C.W. 13-Samuel, a friend of the accused; C.W. 14-Kum. Parvathi, a friend of C.W. 13-Samuel with whom she had love affairs; C.W. 15-Kum. Chaitanya, another friend of the petitioner-accused; C.W. 18-Praveen, a boy aged about 11 years residing in the residential house situate in front of the residence of the accused; and the relevant documents submitted by the prosecution along with the charge-sheet, it could be seen that through the statements of these witnesses and the relevant documents, the



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prosecution has sought to establish the following facts (alleged in the charge-sheet) which have remained undisputed by the learned Counsel for the petitioner-accused:

- (i) On 23-8-2003 at about 10.30 a.m. while the deceased Madhuriswamy and her younger sister C.W. 8-Mythriswamy were together near MES College at Malleswaram in Bangalore City, the accused came there in his Santro Car and asked them to accompany him in his car and accordingly both of them accompanied him by boarding the car,
- (ii) Then, by about 11.00 a.m. they all went to Shanti Sagar Hotel, took meals and thereafter, the said Mythriswamy parted with the accused and the deceased saying that she was going to her grand mother's house and then the accused and the deceased together left the said place in the said car (as



stated by C.W. 8-Mythriswamy).

- (iii) *At about 1.00 p.m. on 23-8-2003, C.W. 18-Praveen saw the accused coming to his house in his Santro car and parking the said car in the car shed of his house and, on seeing the accused, the said Praveen wished him (as stated by C.W. 18).*
- (iv) *At about 5.00 p.m. on the same day i.e., on 23-8-2006 while C.W. 13-Samuel and his friend C.W. 14-Parvati were together moving in a car, the said Samuel received a mobile call from the accused and at that time, the accused informed him that he (accused) was on the back side of the Manipal North Side Hospital along with Madhuriswamy (deceased) and that she was unconscious and therefore, he (C.W. 13) should come to the said place immediately (as stated by C.Ws. 13 and 14).*
- (v) *As requested by the accused, C.Ws. 13 and 14 together went to the said place and saw that the deceased was lying unconscious in the back seat of the said car of the accused and then the accused and said Samuel together took the deceased, first to the Manipal North Side Hospital and from there, to M.S. Ramaiah Hospital and doctor at the latter Hospital examined the deceased and declared that by then she was dead (as stated by C.Ws. 13 and 14)*
- (vi) *The post-mortem examination report issued by C.W. 22-Dr. J. Kiran, establishes that the cause of death of the deceased was due to inhalation of Carbon Monoxide gas.*
- (vii) *The letter dated 26-5-2004 written by C.W. 22-Dr. J. Kiran to the Police Inspector of Basaweshwaranagar Police Station reveals that, in the opinion of the said doctor, 'when two persons are in a closed garage with the car engine running, one can survive and the other can die'. This letter further reveals that this opinion of C.W. 22 is based on some*



literature and also opinion of another professor viz., Dr. Devadas.

10. Thus, it is clear from the above facts and circumstances, which are supported by the statements of the said witnesses and which are not disputed by the petitioner-accused, that it was the accused and the deceased who only were together in the car of the accused between 1.00 p.m. and 5.45 p.m. during which time the deceased must have inhaled the carbon monoxide which resulted in her death. Therefore, it is only the accused who could know as to what happened during that period and as to how and under what circumstances the deceased could inhale carbon monoxide resulting in her death during that period.

11. In order to connect the accused with the factum of inhaling of carbon monoxide by the deceased, which resulted in her death, the prosecution has placed on record the report of Narco Analysis examination of the accused issued by C.W. 28 Dr. S. Malini, the Assistant Director of Forensic Science Laboratory, Madivala, Bangalore. On careful reading of the contents of this report, which explains how and under what circumstances the deceased inhaled carbon monoxide, it could be seen that the facts alleged in the charge-sheet, which are extracted supra, are based on the contents of this report. It discloses that the accused Pradeep Kumar, during tracks, revealed that at about 10.30 a.m. on 23-8-2003 himself, Maduriswamy (deceased) and Mythriswamy, her younger sister, together went to Shanthi Sagar Hotel at Malleswaram, had breakfast and then Mythriswamy parted with the accused and the deceased near Nandini theatre and then he (accused) proceeded along with the

deceased Madhuriswamy in his car for discussing about the arrangements to be made in respect of his marriage with the deceased. This report farther reveals that the accused disclosed before Dr. S. Malini, the following facts:

- (i) The accused reached his residence in his said car along with the deceased Madhuriswamy and he parked his car in the garage and decided to sort out the problem.
- (ii) After parking his said car, he closed the shutter and window of the garage and then himself and the deceased together sat on the back seat in the car. He switched on the car engine for switching on the air-conditioner, hugged and kissed her and tried to console her.
- (iii) At about 1.30 or 1.45 p.m., as he felt uneasiness, got out of the car, opened the garage and came out of it, entered his house and spoke to his aunt, took from the fridge a bottle containing cold water and brought the same to the garage for giving to Madhuri.
- (iv) In the meantime, he received a call from his aunt, he responded to it and then entered the garage after lapse of about 30 to 40 minutes and then he noticed that the



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deceased Madhuri had fallen in between the two seats in the car.

- (v) Though he tried to wake her up for nearly 30 minutes she did not wake up and therefore, he took her in his said car to Manipal North Side Hospital and then he called his friend.
- (vi) As advised by the doctor at Manipal Hospital, he took her to M.S. Ramaiah Hospital in the ambulance.

12. The above statement of the accused given by him before C.W. 28-Dr. S. Malini, the Assistant Director of the FSL, Bangalore during his Narco Analysis Examination, to which he was subjected, even if taken at its face value and accepted in its entirety, does not reveal that he did any act, the consequence of which was inhalation of carbon monoxide by the deceased, which ultimately resulted in her death. It is no doubt true that 'act' includes 'omission' also. But the 'omission' should be of the doing of such an act, as could be expected of a prudent person under given circumstances and such 'omission' should be 'intentional' or 'negligent' one. Sitting in the car, with all its window glasses closed and switching on the engine of the car and the air-conditioner, either for taking some rest or for talking with any one, by parking the car in the car shed with its door closed, with a view to have some privacy, is not uncommon. Therefore, no *mens rea* could be attributed against the accused in doing the said acts which do not constitute ingredients of any offence much less, the one under Section 304, Part II of IPC.

13. Further, it is the very case of the prosecution that the deceased and the accused were deeply in love with each other to the knowledge of their parents and other members of their respective families. It is also its further case that the accused and the deceased had decided to marry each other and the parents of both of them had consented to the same. Therefore, it could be not even be imagined that the accused could do or omit to do, any act, knowing fully that such act or omission could take away the life of the deceased.

14. In order to attribute against the accused, the knowledge required for the offence under Section 304, Part II of IPC the prosecution has to establish that he switched on the engine and the air-conditioner while sitting with the deceased inside



the car by parking it in his garage with its door and window closed, fully knowing that the engine of the car would emit carbon monoxide and the person inhaling the same would die. No material on record, collected by the I.O. during investigation, including the report as to Narco Analysis Examination performed on the accused, establishes that he did the said acts fully knowing that by doing so he was likely to cause inhalation of carbon monoxide by himself and the deceased and it could result in the death of the deceased.

15. Therefore, I am of the considered opinion that even if entire material on record, including the statement of the accused made before C.W. 28, Dr. Malini, the Assistant Director of FSL, during his Narco Analysis Examination is accepted at its face value, it could not be held



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that the accused did any act or that he omitted to do any act, which, he was bound to do, and thereby caused inhalation of carbon monoxide by the deceased which resulted in her death. On the other hand, it is the case of the prosecution that the accused himself had inhaled carbon monoxide while sitting in the car along with the deceased talking to her and he made all the possible efforts *bona fide*, which any one could have made under the said circumstances, in getting the life of the deceased saved. That being so, it could not be held that the death of the deceased was homicidal. If the accused had 'knowledge' that the engine would emit carbon monoxide which could be dangerous to human life, and that there was possibility of himself and the deceased inhaling the same and that its inhalation could result in any severe breathing problem, or death, he would never have chosen to sit in the car along with the deceased in that condition. Therefore, the contention of the learned Counsel for the respondent-CBI that when the accused himself felt breathlessness, he should be taken to have had the knowledge that if the deceased were not taken to the hospital for immediate treatment, she might die cannot be accepted.

16. In view of my foregoing discussion, I am of the considered opinion that the entire material on record collected by the Investigating Officer, even if taken at its face value, is not sufficient to come to conclusion that there is any ground for presuming that the accused has committed the offence under Section 304, Part II of IPC so as to frame charge against him for the same. On the other hand, the said material shows that there is no sufficient ground for proceeding against the accused for the said offence and hence, the accused-petitioner deserves an order of discharge under Section 227 of Cr. P.C.

17. Having arrived at the conclusion that the material on record is not sufficient for framing charge against the accused for the offence under Section 304, Part II of IPC for which he is charge-sheeted, I have to examine further 'whether the facts and circumstances duly supported by the statements of the charge-sheet witnesses and the documents collected by the Investigating Officer during investigation disclose any other offence under IPC or under any other law'. Undisputedly, the death of the deceased was due to inhalation of carbon monoxide. The said carbon monoxide was emitted from the engine of the car when it was switched on for switching on the air-conditioner. The act of accused is only that of switching on the engine and the air-conditioner. No culpable negligence could be attributed to the accused in doing the said acts. Therefore, it cannot even be held that the accused negligently caused the deceased to inhale carbon monoxide, which ultimately resulted in her death so as to make him liable to be punished for the offence under Section 304-A of IPC. Further, it is the opinion of C.W. 22-Dr. Kiran who conducted P.M. Examination on the dead body

of the deceased that the external injuries which he noticed on the dead body of the deceased during his P.M. Examination could be caused while taking her from the car when she was unconscious. Therefore, no offence under

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IPC for causing the said injuries on the person of the deceased could be made out against the accused.

18. Further, the deceased and the accused together sat in the car and they went on talking to each other for hours together by closing the doors of the garage and also of the car. The said act of the deceased and the accused was quite voluntary. In other words, neither of them compelled the other to sit in the car against the will of the other. Therefore, the said facts do not constitute any offence of wrongful restraint or wrongful confinement of the deceased by the accused. The deceased and the accused were deeply in love with each other. Further, there is no material on record to show that the accused forced the deceased to accompany him in his car. After they together had their breakfast/meals along with C.W. 8-Mythriswamy, the deceased accompanied the accused in his car voluntarily. Further, it is not the case of the prosecution that the deceased was under the age of 18 years. No material is collected by the Investigating Officer as to exact age of the deceased as on the date of the said incident. On the other hand, the P.M. Examination report, the document relied upon by the prosecution itself, reveals that the age of the deceased was 18 years as on the said date. Therefore, taking of the deceased by the accused, from her residence or from any other place, in his car to his residence and making her to sit with him in his car cannot be held to be taking of the deceased from lawful guardianship of her parents. Therefore, even an offence of kidnapping or abduction could not be made out from the facts and circumstances of the case. Further, there is no material on record to show that the accused behaved with the deceased indecently while they were together in the car during the relevant time. Therefore an offence under Section 354 of IPC is also not made out against the petitioner-accused.

19. For the reasons aforesaid, I am of the considered opinion that the entire material placed on record by the I.O. along with the charge-sheet, even if taken at its face value and is accepted in its entirety it does not disclose the commission of any cognizable offence under any of the provisions of Penal Code, 1860 including Section 304, Part II, for which the accused has been charge-sheeted, nor does it disclose any offence under any other law. Therefore, I am of the further opinion that the petitioner-accused deserves an order of discharge from the offence under Section 304, Part II of IPC by allowing his application filed under Section 227 of Cr. P.C. in Sessions Case No. 161 of 2005 on the file of the FTC-VI, Bangalore City and all further proceedings in the said case deserve to be quashed. Hence, the following:

#### ORDER

The present petition filed under Section 482 of Cr. P.C. by the petitioner who is accused in S.C. No. 161 of 2005 on the file of FTC-VI, Bangalore City is hereby allowed. Consequently order dated 15-4-2006 passed in the said case rejecting the application

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filed by the accused therein under Section 227 of Cr. P.C. is hereby set aside. The said

application is hereby allowed and the petitioner-accused is discharged from the accusation of having committed the offence under Section 304, Part II of IPC for which he has been charge-sheeted. Consequently, all further proceedings in the said case are hereby quashed.

20. A copy of operative portion of this order shall be sent forthwith to the said Court.

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<sup>1</sup>. 1996 (3) Crimes 288 (SC) : (1996) 6 SCC 129 : 1996 SCC (Cri.) 1124.

<sup>2</sup>. (1996) 8 SCC 164 : 1996 SCC (Cri.) 628.

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