

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH  
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF MARCH  
TWO THOUSAND AND FIFTEEN

PRESENT

**THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR**

**WRIT PETITION No.4451 of 2015**

**BETWEEN**

A. Vinod.

**... PETITIONER**

**AND**

The State of Telangana, Rep. by its Principal Secretary (Department of Revenue), A.P. Secretariat Building, Hyderabad and others.

**...RESPONDENTS**

**The Court made the following:**

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**ORDER:**

Heard.

2. Petitioner questions the memo dated 18.02.2015 filed by respondent No.1 before the Judicial Magistrate of First Class, Kaikaluru, seeking alteration of FIR originally filed under Sections 304-A and 337 IPC to be altered to Section 304(II), 337 read with 34 IPC read with Sections 3 and 4 read with 181, 190 and 134(A) r/w 187 of Motor Vehicles Act.

3. Facts, in brief, are that the Village Revenue Officer, Pedapalaparru Village, gave a complaint to the Station House Officer, Mudinepalli Police Station, regarding an accident which occurred at Peddapalaparru village, within the limits of Mudinepalli police station. Based on the said complaint, the Station House Officer registered

a case in Crime No.24 of 2015 dated 01.02.2015 against the driver of the lorry for the offences under Sections 304 and 337 IPC and the said crime was under investigation. Petitioner states that he is the owner of the lorry, in question, and that he is carrying on transport business and owns several lorries. Petitioner states that he employs drivers of the lorry, who are having valid driving licences and the vehicles are also kept in order along with the vehicle fitness certificates.

While so, he states that during investigation, respondent No.1 filed impugned memo dated 18.02.2015 seeking to include petitioner as A2 by altering Section 304-A to 304(II) IPC.

4. The said memo is questioned on the principal ground that the offence under Section 304-A IPC was rightly registered and its alteration to 304(II) IPC was wholly unjustified and is erroneous in view of the fact that neither an intention to cause the accident can be inferred nor any vicarious liability can be attached to the petitioner merely on the ground that he is the registered owner of the vehicle involved in the accident.

5. Learned counsel for the petitioner places strong reliance upon decision of Supreme Court in **STATE OF GUJARAT v. HAIDARALI**<sup>[1]</sup>

to contend that Section 304-A IPC carves out specific offence where death is caused on account of rash and negligent act which does not amount to culpable homicide either under Section 299 or 300 IPC. Thus, according to the learned counsel, therefore, the said decision squarely applies to the facts of this case and contends that when ingredients of Section 304-A IPC are evident from the original FIR

its alteration to Section 304-II IPC is wholly inapplicable. Learned counsel also relied upon another decision of Supreme Court in **NATHULAL v.**

**STATE OF MADHYA PRADESH**<sup>[2]</sup> to contend that

*mens rea* is an essential ingredient of a criminal offence and in the absence of such *mens rea* on the facts of the present case, it cannot be said that the crime registered under Section 304-A IPC can be converted to Section 304(II) IPC as is sought to be done by the investigating officer.

6. I have considered the said contentions, but in my view interference by this court, is not warranted. Even according to the petitioner, he, being in transport business, specifically states that all the vehicles are kept in order along with the vehicle fitness certificates and the drivers employed have valid driving licences. In the present case, the vehicle admittedly did not have any fitness certificate and the impugned memo, which was filed before the court below, mentions that investigation reveals that the driver of the lorry did not have valid driving licence. It is in the light of the said investigation that the petitioner was sought to be added as accused No.2 as he had full knowledge about the expiry of the fitness certificate of the lorry and also the fact that the driver of the lorry did not have driving licence, which resulted in the accident and loss of life of six innocent persons apart from injuries to two persons.

7. Undoubtedly, Sections 304-A and 304(II) IPC would apply in different situations. While the former would apply where it is merely a case of accident arising out of negligence, the latter would be more serious charge.

In **SHANKAR NARAYAN BHADOLKAR v. STATE OF MAHARASHTRA**<sup>[3]</sup> the Supreme Court had occasion to examine this and in paragraphs 18 and 19 it was held as follows:

“18. Coming to the plea of the applicability of Section [304A](#) it is to be noted that the said provision relates to death caused by negligence. Section [304A](#) applies to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. The provision relating to offences outside the range of Section [299](#) and [300](#) IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section [304A](#). It carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section [299](#) of murder in Section [300](#) IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a persons" death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section [304A](#) IPC has to make room for the graver and more serious

charge of culpable homicide.

**19.** In order to be encompassed the protection under Section [304A](#) there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section [304A](#) has no application. The accused-appellant not only picked up the gun, unlocked it for user but also put the cartridges and fired from very close range, aiming at a very vital part of the body.

After examining the facts of that case, the Supreme Court held in paragraphs 33, 34 and 36 as follows by treating the case as one falling under Section 304(II) IPC.

**“33.** Clause (c) of Section [299](#) and Clause (4) of Section [300](#) both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section [300](#) would be applicable where the knowledge of the offender as to the probability of death of a person or person in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

**34.** The above are only broad guidelines and not cast iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

...

**36.** Looked at the scenario as described by PWs 2 and 3 and evidence of ballistic report, in our considered view the offence committed by accused is covered by Section [304](#) Part II.”

8. It is, however, to be seen that the aforesaid decision was rendered against the conviction of the accused and after trial when entire evidence was before the court. So far as present case is concerned, the investigation is still pending and it is merely at the stage of alteration of charge sheet. Ultimately, the present case will have to be examined after consideration of evidence and at this stage, it cannot be said that Section 304(II) IPC can never arise on the facts and circumstances of this case. The adjudication of this question, in my view, would be too premature and it is just and proper to permit the investigation to go on.

The writ petition is, therefore, dismissed. As a sequel,  
the miscellaneous applications, if any, shall stand closed. There shall be no  
order as to costs.

VILAS V. AFZULPURKAR, J

March 25, 2015  
LMV

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[\[1\]](#) AIR 1976 SC 1012  
[\[2\]](#) AIR 1966 SC 43  
[\[3\]](#) AIR 2004 SC 1966