

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 390 of 2021**

Neeraj Agrawal, S/o Shri Madan Mohan Agrawal, aged about 45 years,
R/o Agrasen Chowk, Police Station – Saraswati Nagar, Raipur, District
Raipur (C.G.)

---- Applicant**Versus**

The State of Chhattisgarh, through : The Police Station, Civil Lines,
Raipur, District Raipur (C.G.)

----Non-applicant

For Applicant	: Mr. Rajat Agrawal, Advocate.
For Non-applicant	: Mr. D.K. Tiwari, Dy. Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****23.07.2021**

(1) The proceedings of matter have been taken-up through Video Conferencing.

(2) This revision is directed against the order dated 24.3.2021 passed by 11th Additional Sessions Judge, Raipur in Session Trial No. 116/2021 whereby charge under Section 304 IPC has been framed against the applicant.

(3) The facts of the case in brief is that on 1.3.2020 one J.R. Sahu was returning back after morning walk and at that time when he was walking on left side of the corner of the road, at the same time applicant while driving the Maruty Swift Car bearing registration No. C.G.-04/LV/5678 in high speed, dashed him and dragged him up to some distance, as a result of which, J.R. Sahu (since deceased) sustained grievous injuries and as a result of that he succumbed to the said injuries, thereafter, the applicant fled away from the spot. Based on this,

FIR was lodged by his son namely Manohar Lal Sahu under Section 304 IPC. After usual investigation, charge sheet has been filed against the applicant under Section 304 of the IPC.

(4) On the basis of evidence of eye-witnesses and other material available on record, learned 11th Additional Sessions Judge, Raipur framed charge under Section 304 of the IPC against the applicant, which has been challenged by the applicant by filing the instant revision petition.

(5) Learned counsel for the applicant submits that killing a person with requisite intention, killing a person with intention to cause such bodily injury as is likely to cause his death or with such knowledge that it is likely to cause his death are essential requirements/ingredients for culpable homicide not amounting to murder under Section 304 of the PC, but in the instant case no such ingredients are fulfilled from the evidence collected by the prosecution. He further submits that if the entire case of the prosecution is taken in toto, it does not travel beyond the scope of Section 304-A of IPC, because, the act of the applicant is said to be causing death by driving the vehicle in a high speed, would fall outside the purview of commission of offence of culpable homicidal not amounting to murder, therefore, framing of charge against the applicant under Section 304 IPC is contrary to statutory provisions of law and the applicant is entitled to be discharged from the said offence.

(6) On the other hand, learned Dy. Govt. Advocate for the State, while supporting the charges framed by the Sessions Judge, would submit that the manner, in which, the incident took place, offence of culpable homicide not amounting to murder is made out against the applicant and the order impugned does not call for any interference in the instant revision petition.

(7) I have heard learned counsel for the parties and perused the records of criminal revision which contains copy of entire charge-sheet.

(8) As per case of the prosecution, the incident took place on 1.3.2020 at 6 AM in the morning, which is not a time of rush on the road. As per statements of

eye witnesses, at the time of incident, deceased was returning back after morning walk and when he was walking of his left side along the road, at the same time, applicant/accused while driving the car at high speed, dashed the deceased and dragged him knowingly up to some distance and due to injuries sustained by him, he died on the spot itself.

(9) The same issue as is in this case was involved in the case of **Dinesh Kumar Yadav @ Pappu v. State of Chhattisgarh**¹, in which this Court while considering the issue has discussed in paragraphs 6 & 7, which are as under:-

“(6) Among the *three* Sections of IPC i.e. 302, 304 & 304-A, Section 304-A is an offence where the death is caused by doing a rash or negligent act, but such act does not amount to culpable homicide u/s 294 or murder u/s 300 IPC. Doing an act with an intention of causing death or knowledge that doing such an act was likely to cause death is culpable homicide. Therefore, intention or knowledge are the two important elements to bring an act within the ambit of any part of Section 304 IPC. Knowledge of consequence which may result in doing an act is quite different than the intention which denotes that a particular consequence should ensure. For attracting the former part of Section 304, an element of intention is a factor whereas for attracting the later part, an element of knowledge is a factor. The intention is the purposeful doing of a thing to achieve a particular result, whereas, the knowledge is an awareness which attributes to be well informed that a particular result may happen by doing a thing. Section 304A relates to causing death by negligence. It provides that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished in accordance with the provisions of this Section.

(7) Therefore, with reference to above, *three* categories for

¹ Criminal Revision No. 486 of 2011, decided on 04.01.2012

classification of an offence are very clear. *One*, culpable homicide amount to murder; *other*, culpable homicide not amounting to murder; and *last*, causing death by doing any rash or negligent act not amounting to culpable homicide. For the former *two* categories culpable homicide is a common factor, whereas for the *last* category i.e. for an offence punishable u/s 304A the act must not be amounting to culpable homicide. It is sufficient for Section 304-A that a person has acted in rash or negligent manner and that, such act has caused death of any person. Unlike the above offences neither the intention nor the knowledge of the death are attributable for an offence u/s 304-A IPC.”

(10) If basic ingredients of Section 304 of IPC and Section 304-A of the IPC are seen together, then it is clear that Section 304-A carves out the cases 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 of the IPC, or culpable homicide amounting to murder under Section 300 of IPC. In other words, Section 304-A excludes all the ingredients of Section 299 of IPC, as also of Section 300 IPC. Where intention or knowledge is the “motivating Force” of the act complained of, Section 304-A IPC 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.

(11) Hon'ble Supreme Court in the matter of **Naresh Giri v. State of M.P.**², has discussed such issue in paragraph 6 & 7 of its judgment, which are as under :-

“6. [Section 304-A](#) IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of [Sections 299](#) and [300](#) IPC. [Section 304-A](#) applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence

2 (2008) 1 SCC 791

and rashness are essential elements under [Section 304-A](#).

7. [Section 304-A](#) 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](#) or murder under [Section 300](#). If a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, [Section 304-A](#) has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of [Section 304-A](#) must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. [Section 304-A](#) discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.”

(12) In view of the aforesaid legal position, it is apparent that incident had taken place at 6 AM in the morning, which is not a rush time on the road. Eye

witnesses have stated that applicant while driving the offending vehicle at high speed, dashed the deceased and dragged him up to some distance. Spot map prepared by Police shows that applicant and the deceased both were on left side of the road. On the basis of material available on record, *prima facie*, it does not appear that there was intention of the applicant to kill the deceased or applicant was having knowledge that driving the car on open & an uncrowded road, was likely to cause death of the deceased. Material available on record shows that it is a case of rash and negligent driving of the vehicle and lack of reasonable care, which was required to be taken by the applicant at the time of incident. Only on the ground that after the incident, deceased was dragged up to some distance does not show *prima facie* that the applicant was having knowledge that doing of his such act was likely to cause death of the deceased.

(13) In view of the above discussion and from the entire material available on record, it does not appear that act of the applicant was falling within the category of culpable homicide not amounting to murder and the charge framed by the 11th Additional Sessions Judge, Raipur under Section 304 of IPC, thus cannot be sustained.

(14) For the foregoing reasons, the revision is allowed. The order of framing charge under Section 304 IPC and the charge framed under the aforesaid Section is liable to be and is hereby set aside. The learned 11th Additional Sessions Judge, Raipur is directed to frame charge under Section 304-A IPC and to proceed further in accordance with Section 228 (1)(a) of the Code.

Sd/-
(N.K.Chandravanshi)
Judge

D/-

