

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (ABA) No. 87 of 2021

(Sachin Durgaprasad Dixit ..vs.. State of Maharashtra through P.S.O., P.S. Ramnagar, Wardha,
Tah. & Dist. Wardha)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. A. Dhawas, Advocate for the applicant
Mr. M. K. Pathan, APP for the State/non-applicant
Mrs. P. S. Chaudhari, Advocate to assist the prosecution

CORAM : ROHIT B. DEO, J.

DATED : 08-03-2021

Heard.

2. The applicant is apprehending arrest in Crime 0001/2021 registered with Police Station, Ramnagar, Wardha for the offences punishable under Sections 279, 304 and 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

3. Mr. Raunak Subodhrao Sabane was on a morning walk at 5.00 to 5.20 a.m. on 1-1-2021, when he was mowed down by Echo Sport car bearing registration number MH-06-BE-4711. Mr. Raunak Subodhrao Sabane died on the spot. On the basis of the report lodged by cousin brother of the deceased Mr. Abhijit Sabhane,

offences punishable under Section 279 and 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act, 1988 were registered at Ramnagar Police Station, Wardha vide Crime 0001/2021.

4. During the course of the investigation, the material unearthed resulted in the investigating agency registering offence punishable under Section 304 of the Indian Penal Code, which is non-bailable and the applicant who was the alleged driver of the car applied for pre-arrest protection, which is rejected by the learned Additional Sessions Judge, Wardha vide order dated 18-1-2021.

5. I have perused the material in the case diary and the CCTV footage which captures the incident. In my considered view, there is no room to exercise discretion in favour of the applicant, who is a Police Constable.

6. Initially, the investigating agency invoked Sections 279 and 304-A and Section 304 of Indian Penal Code was added on 3-1-2021. In the interregnum, the applicant was medically examined and was found to be

under the influence of liquor when he was driving the killer vehicle. The CCTV footage which I have perused is disturbing. It appears that the deceased was walking on the left side of the road and the killer car which was on the middle trajectory deliberately swerved to the left, came behind the deceased and mowed him down. The *prima facie* impression is, as if, the killer car deliberately mowed down the deceased. The statements of the witnesses who were travelling in the killer car, which was being driven by the applicant are to the effect that the applicant deliberately swerved the car behind the deceased, may be with the intent to cut-in the deceased and take perverse joy in frightening the deceased.

7. Be that as it may, in my considered view, *prima facie* the ingredients of culpable homicide are made out. The second part of Section 304 which contemplates knowledge in contradistinction with the first part which contemplates intention, is clearly attracted.

8. The observations of the Supreme Court in *Alister Anthony Pareira Vs. State of Maharashtra [(2012) 2 SCC*

648], *inter alia* in paragraph 41, 48 and 79 which reads thus are relevant :

41. Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law - in view of the provisions of the IPC - the cases which fall within the last clause of Section 299 but not within clause "fourthly" of Section 300 may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II IPC. Section 304A IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.

48. On behalf of the appellant it was strenuously urged that the conviction of the appellant by the High Court for the offence under Section 304 Part II IPC rests solely on the premise that the appellant had knowledge that his reckless or negligent driving in a drunken condition could result in serious consequences of causing fatal accident. It was submitted that neither in the charge framed against the appellant, the crux of the prosecution case that the appellant was in a drunken condition was stated nor incriminating evidences and circumstances relating to rashness or negligence of the accused in the drunken

condition were put to him in the statement under Section 313 of the Code.

79. There is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become involuntary act simply because its consequences were unforeseen. The cases of negligence or of rashness or dangerous driving do not eliminate the act being voluntary. In the present case, the essential ingredients of Section 304 Part II IPC have been successfully established by the prosecution against the appellant. The infirmities pointed out by Mr. U. U. Lalit, learned Senior Counsel for the appellant, which have been noticed above are not substantial and in no way affect the legality of the trial and the conviction of the appellant under Section 304 Part II IPC. We uphold the view of the High Court being consistent with the evidence on record and law.

9. The applicant is a Police Constable and was expected to follow the law. He chose to drive while under the influence of liquor and then, despite knowing that he is likely to cause death, swerved the vehicle deliberately in an attempt to cut in and frighten the deceased. As observed supra, the impression which the CCTV footage *prima facie* gives, is as if, there was a deliberate attempt to mow down the deceased. It is not as if the vehicle was out of control. The vehicle was

deliberately taken to the left of the road, approached the deceased from behind and then mowed down the deceased.

10. The application is without substance and is dismissed.

JUDGE

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