

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 989 of 2019**

**Bodha @ Ramesh Turi & Ors.**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioners**

: Mr. Prabir Kumar Mitra,  
Ms. Subhanwita Ghosh.

**For the State**

: Mr. S. G. Mukherji, Ld. P.P.  
Mr. Imran Ali,  
Mrs. Debjani Sahu.

**For the opposite party No. 2**

: Mr. Kallol Mondal,  
Mr. Krishan Ray.

Heard on

: 16.01.2023

Judgment on

: 06.02.2023

**Shampa Dutt (Paul), J.:**

The present revision has been preferred against an order dated 06.02.2019 passed the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bardhaman whereby the petitioners' prayer for alteration of the charge under Section 304 of the Indian Penal Code to Section 304A of the Indian Penal Code has been rejected in connection with Salanpur Police Station Case 162/2016 dated 30/12/2016 under Sections 279/304 of the Indian Penal Code corresponding to G.R. Case No. 3333/16 and S.C. Case 150/17, now pending before the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bardhaman.

The petitioner's case before this court is that have been arraigned as accused persons in connection with the aforesaid police station case.

The instant police station has been started inter alia alleging that:

"On 04.12.2016 at about 5.30 or 6p.m., when the complainant was returning to his house along Samdi Bonjemari ECL Road on his motorcycle, he saw four persons namely, Bodha Turi, Bullet Turi, Rahul Turi and Kailash Bhuian on a bike bearing registration No. WB 38AF 6584 being driven by Bodha @ Sukdev Turi going towards Bonjemari from Samdi more and they were abusing loudly at somebody using filthy language and overtook the complainant's motor-cycle. Bodha Turi was riding the bike recklessly in excessive speed. After a while, the

complainant switched on his motor cycle's head light and saw that one pedestrian was heading towards Fulberia more keeping to the left side of the road. Suddenly the said Bodha Turi recklessly rode his bike and intentionally hit the pedestrian. The complainant soon reached the spot and stopped there to help the victim and found that the victim was his own father namely, Dipak Chatterjee. Then with the help of local people, the complainant took his father to Asansol District Hospital where the victim was declared as brought dead".

After completion of investigation, Charge Sheet has been submitted by the investigating agency on 31.01.2017 being Charge Sheet No. 05/17 under Sections 279/304/120B of the Indian Penal Code against the petitioners.

The case was committed before the Learned Additional District & Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bardhaman for trial.

The petitioners prayed for alteration of charges before the Learned Additional District & Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bardhaman.

On 06.02.2019 i.e. on the date fixed for hearing of charge, the petitioners prayed for framing of charge from Section 304 of the Indian Penal Code to Section 304A of the Indian Penal Code.

By an order dated 06.02.2019, the Learned Additional District & Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bradhaman has rejected

the prayer of the petitioners for framing charge under Section 304A of the Indian Penal Code instead of Section 304 IPC.

Being aggrieved by and dissatisfied with the aforesaid order dated 06.02.2019 passed by the Learned Additional District & Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bradhaman, the present revision has been preferred.

**Mr. Prabir Kumar Mitra, the Learned counsel for the petitioners** has submitted that the Learned Judge has failed to appreciate that the charge under Section 304 of the Indian Penal Code has no manner of application in the present case.

The Learned Judge has failed to appreciate that the First Information Report has been lodged after almost 27days without explaining the reasons for such inordinate delay and has failed to appreciate from the facts and circumstances that there can be no scope for invoking Section 304 of the Indian Penal Code where it is abundantly clear that if the prosecution story is taken to be true in its entirety, it can at best be a case of Sections 279/304A of the Indian Penal code.

That Section 304 of the Indian Penal Code is distinctly different from Section 304A of the Indian Penal Code with its ingredients and elements.

The Learned Judge has failed to appreciate that Section 279 of the Indian Penal Code is an auxiliary of Section 304A of the Indian Penal Code and both of them are mutually exclusive to each other.

The Learned Judge has failed to appreciate that the charge under Section 279 of the Indian Penal Code cannot go along with Section 304 of the Indian Penal Code.

The impugned order is otherwise bad in law and is liable to be set aside.

Written notes along with judgments relied upon has been filed by the learned counsel for the petitioner.

**Mr. Kallol Mondal the Learned Counsel for the opposite party no. 2/de-facto complainant** has submitted that the charge framed by the trial court is in accordance with law and that the prayer of the petitioners that charge should be framed under Section 304A instead of Section 304 Indian Penal Code is not in accordance with law as the materials in the Case Diary clearly show that the accused persons had knowledge and intention to cause the death of the father of the complainant. As such 'mens rea' is present in respect of the act of the accused persons in this case. The prayer of the petitioners can be considered by the trial court after evidence has been adduced and also considering the materials on record, the trial court has the power to decide the case in accordance with law.

The revisional court is not the appropriate forum to consider the said prayer of the accused persons and as such the revision is liable to be dismissed.

Mr. Mondal has also filed a counter reply to the notes submitted by the petitioners along with judgments in support of the contention of the opposite party no. 2.

**Mr. S.G. Mukherjee, Learned public prosecutor** has produced the case diary and submitted that there is sufficient material for the trial court to proceed in respect of Section 304 IPC. The trial court considering the materials on record and the case diary along with the evidence collected there in making out a prima facie case under Section 304 IPC framed charge against the accused persons in accordance with law and the prayer of the accused persons/ petitioners herein is to be considered by the trial court after evidence has been adduced. And the trial court is the appropriate forum where a prayer of such nature can be considered only after all the evidence has been brought on record. The trial court on considering all the materials has the power to pass a judgment in accordance with law and as such the learned public prosecutor has prayed for dismissal of the revisional application.

Heard learned counsels for both sides and the learned public prosecutor. Considered the materials on record.

The relevant portion of the order dated 06.02.2019 challenged before this court is as follows:-

*“Perused the case record, CD and the submission of the parties, I am of the considered opinion that the fact of intention/knowledge is to be considered at the time of trial and not at this juncture. Prima facie involvement coupled with eyewitness account is found with regard to the accused persons. The ratio of two judgments is not applicable in this case at this juncture. The decision of Hon’ble Supreme court is not applicable to the extent that the facts are totally different and the Hon’ble High Court has come to the decision that there was no willful and deliberate act on the part of the accused but in this case with lodging FIR from very start allegation of motivated act is available.*

*Under the facts and circumstances of the case the prayer for alteration of Section from 304IPC to 304A IPC is hereby rejected”.*

On 12.03.2020 the trial court has framed charges against the accused persons under Sections 304/279/34 of the Indian Penal Code.

Hence the revision.

**The petitioners case in their written notes of argument is that:-**

- (i) After 26 days of the said incident the complaint was lodged and the F.I.R. was initiated on 30.12.2016.*
- (ii) That usually during winter evenings, as was the case on 04.12.2016, it is almost dark around 5.30/6.00 in the evening. So, in the aforesaid case recognizing the accused*

*persons from some distance would have been highly improbable.*

- (iii) Immediately after the occurrence, followed by the death of the complainant's father, Dipak Chatterjee an U.D. Case was initiated being 533/16 dated 04.12.12.*
- (iv) In such a case surely an inquest must have been conducted and the persons who have claimed to see the occurrence and who are also relations of the victim must have made some statement under primary inquiry u/s 174 Cr.P.C. and signed the report that must have been prepared.*
- (v) But incidentally the same has not been tagged in the 173 Cr.P.C. papers in the present police station case.*
- (vi) The charges framed u/s 279 & 304 of Indian Penal Code cannot go together.*
- (vii) Charges u/s 279 with Section 304 of the Indian Penal Code does not hold good, rather Section 279 with 304A of the Indian Penal Code should be the proper charges to be framed.*

**The following judgments have been relied upon on behalf of the petitioners:-**

- (a) Naresh Giri vs. State of M.P., (2008) 1 C Cr LR (SC) 361.***

*“7. 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 and rashness are essential elements under Section 304-A.*

**8.** *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.*

**16.** *Normally, as rightly observed by the High Court charges can be altered at any stage subsequent to the framing of charges. But the case at hand is one where prima facie Section 302 IPC has no application.*

**17.** *Accordingly, the appeal is allowed. The charges stand altered to Section 304-A IPC along with Sections 279 and 337 IPC.”*

**(b) Goutam Singh vs. The State of West Bengal, CRR No.**

**3581 of 2009, on January 6, 2010.**

*“5. Thus, from the materials on the basis of which charge-sheet has been submitted against the present petitioner it appears that the prosecution never made out a case of any willful and deliberate act on the part of the accused and that the accused caused the death by his such act with the knowledge that it was likely to cause death. On the other hand, it is a case of rash and negligent driving and by such rash and negligent act causing death of a person, in such circumstances framing of charge under Section 304 of the Indian Penal Code is not at all justified.”*

**(c) State of Maharashtra vs Salman Salim Khan and**

**Another, Criminal Appeal No. 1508 of 2003, 2004 SCC**

**(Cri) 337.**

*“7. It is to be noted that the respondent was granted bail even after the charge was modified to include Section 304 Part II IPC. On the framing of the charge under Section 304 Part II IPC, the respondent filed Criminal Application No. 463 of 2003 in the Court of Session alleging that the facts as narrated in*

*the complaint did not constitute an offence punishable under Section 304 Part II IPC and if at all, only a charge for an offence punishable under Section 304-A could be framed against him, apart from other offences triable by the Court of Magistrate. The said application came to be rejected by the Sessions Court and the learned Sessions Judge then proceeded to frame charges; one of which was for an offence punishable under Section 304 Part II IPC.*

**8.** *Being aggrieved by the dismissal of his application and the consequential framing of charge under Section 304 Part II, the respondent preferred a criminal application under Section 482 of the Code before the Criminal Appellate Bench of the High Court of Judicature at Bombay. The High Court by the impugned order has allowed the said application and quashed the order made by the learned Sessions Judge framing a charge under Section 304 Part II IPC against the respondent herein while it maintained the other charges and directed the appropriate Magistrate's Court to frame de novo charges under various sections mentioned in the said impugned order of the High Court including one under Section 304-A IPC.*

**11.** *But for the fact that two courts below i.e. the Sessions Court and the High Court having gone into this issue at length and having expressed almost a conclusive opinion as to the nature of offence, we would not have interfered with the impugned order of the High Court because, as stated above, neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under Section 304-A or Section 304 Part II IPC except for the fact that the forum trying the charge might have been different, which by itself, in our opinion, would not cause any prejudice. This is because at any stage of the trial it would have been open to the court concerned to*

*have altered the charge appropriately depending on the material that is brought before it in the form of evidence. But now by virtue of the impugned judgment of the High Court, even if in the course of the trial the Magistrate were to come to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under Section 304-A, it will not be possible for it to pass appropriate order. To that extent the prosecution case gets pre-empted."*

**(d) *Niranjan Singh Karam Singh Punjabi vs. Jitendra***

***Bhimraj Bijja, AIR 1990 SC 1962.***

*"6.....After considering the case law on the subject, this Court deduced as under:-*

*"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

*(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.*

*(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

**7.....***From the above discussion it seems well settled that at the Sections 227-228 stage 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 face 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 the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”*

**(e) Yogesh alias Sachin Jagdish Joshi vs State of Maharashtra, (2009) 1 SCC (Cri) 51.**

**“15.** *Chapter XVIII of the Code lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police*

*report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is “sufficient ground” to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.*

**16.** *It is trite that the words “not sufficient ground for proceeding against the accused” appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. (See State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] and Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] .”*

**(f) Darshan Singh Saini vs Sohan Singh and Another,**  
**(2016) 2 SCC (Cri) 418, (2015) 14 SCC 570.**

**“10.** *The second contention advanced at the hands of the learned counsel for the*

*appellant was based on the fact, that no cognizance was taken by the Judicial Magistrate, First Class, Nalagarh, against the appellant under Section 323 IPC, and as such, it was not permissible for the High Court to have initiated proceedings against the appellant, under Section 323 IPC, whilst accepting the contention of the appellant to set aside the proceedings initiated by the Judicial Magistrate, First Class, Nalagarh under Sections 341 and 506 IPC read with Section 34 thereof (vide order dated 6-2-2009).*

**11.** *It is not possible for us to accept the instant contention, principally on the basis of Section 216 of the Code of Criminal Procedure, which postulates that it is open to "any court" to alter or add to any charge, at any time before the judgment is pronounced."*

**The case as made out from the notes submitted by the opposite party no. 2 is that:-**

- i) *Bodha @ Ramesh Turi, Bulet Turi, Rahul Turi& Kailash Bhuinya used to take alcohol opium etc on the Samdi-Bonjemhari E.C.L. Road (i.e. the place of occurrence). They also used to gamble on that road (which can be inferred from the statements of the witnesses recorded U/s 161& 164 of Cr.P.C.).*
- ii) *The deceased used to go for evening walk daily & he used to return to home through Samdi-Bonjemhari E.C.L. Road (which can be inferred from the statements recorded u/s 161 & 164 of Cr.P.C.)*

- iii) *The deceased raised protest against their illegal work & they had threatened the deceased with dire consequences. The deceased told this incident to Santosh Chatterjee, who advised the deceased not to worry & not to give importance to their threat. (which can be inferred from the statement of Santosh Chatterjee recorded u/s 161 & 164 of Cr.P.C.)*
- iv) *On 04.12.2016 the above noted 4 persons while riding a motorcycle bearing Regn. No. WB-38 AF 6584 crossed the de-facto complainant on Samdi Bonjemhari E.C.L. Road, they were abusing someone loudly & were riding the motorcycle in a high speed (which can be inferred from the F.I.R. as well as statements recorded u/s 161 Cr. P.C.)*
- v) *The de-facto complainant saw with the help of the head light of his motor cycle that the above noted 4 persons were riding the motor cycle aiming one pedestrian who was walking on the left side of the road. The pedestrian anticipated the danger & moved towards more left but those persons intentionally hit that pedestrian in a high speed, as a consequence of such collision that pedestrian has died (which can be inferred from the F.I.R.)*
- vi) *The delay in lodging the F.I.R. was due to mental shock, funeral ceremonies & arrangement of medical treatment of the mother & sister of the de-facto complainant which is*

*clearly explained in the last paragraph of the F.I.R. The complainant/opposite party No. 2 also is in possession of the documents of the treatment in the medical institution in southern part of the country.*

- vii) That the petitioner & his companions had intentionally dashed the father of the defacto complainant due to previous grudge with the knowledge that such act may cause death or such bodily injury as is likely to cause death, which is the substantial ingredient of Sec 304 IPC.*
- viii) The charge under Section 279 of I.P.C. says “whoever drives any vehicle on any public way so rashly as to endanger human life.....” can alternatively be framed along with a charge under Section 304 of the Indian Penal Code 1860 and there is absolutely no bar under any statute. Furthermore the ingredients of Section 304 of the IPC include the ingredients of the offence defined in Section 279 of the IPC and they are also they are also not in conflict with each other.*
- ix) In the instant case the petitioner & his companions drove their motor cycle on a public way so rashly as to endanger human life having the knowledge that such act may cause death or such bodily injury as is likely to cause death as such the charge under both the Sections being 279 & 304*

*IPC are very well sustainable and in the event it is found the act of the accused persons were in furtherance of their common intention to kill the deceased then the charge may further be altered to Section 302 IPC read with section 34 of the IPC.*

One of the Judgments relied upon by the opposite party no. 2 is

**2008 (1) CCLR (S.C.) 361, Naresh Giri vs State of M.P., (Para 7).**

**Para 7** *“when the intent or knowledge is the direct motivating force of the act, sec 304-A has to make room for the graver and more serious charge of culpable homicide”. In the instant case mens/intention was the direct motivating force. The previous threats extended at the behest of the accused person clearly envisage the support towards the presence of such intention.”*

It is further submitted by the opposite party that the judgment referred to by the petitioner in **2004 SCC (Cri) 337 State of Maharashtra vs. Salman Salim Khan (Supra)** is in favour of the opposite party no. 2.

The following judgments have also been relied upon by the opposite party no. 2:-

(i) **State through PS Lodhi Colony, New Delhi vs Sanjeev Nanda, (2012) 8 SCC 450.**

**“114.** *The principle mentioned by this Court in Alister Anthony Pareira [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] indicates that the person must be*

*presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road. In our view, Alister Anthony Pareira [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] judgment calls for no reconsideration. Assuming that Shri Ram Jethmalani is right in contending that while he was driving the vehicle in a drunken state, he had no intention or knowledge that his action was likely to cause death of six human beings, in our view, at least, immediately after having hit so many human beings and the bodies scattered around, he had the knowledge that his action was likely to cause death of so many human beings, lying on the road unattended. To say, still he had no knowledge about his action is too childish which no reasonable man can accept as worthy of consideration. So far as this case is concerned, it has been brought out in evidence that the accused was in an inebriated state, after consuming excessive alcohol, he was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. The accused had sufficient knowledge that his action was likely to cause death and such an action would, in the facts and circumstances of this case, fall under Section 304 Part II IPC and the trial court has rightly held so and the High Court has committed an error in converting the offence to Section 304-A IPC.”*

**(ii) Alister Anthony Pareira vs State of Maharashtra, (2012) 2 SCC 648.**

**“40.** *The question is whether indictment of an accused under Section 304 Part II and*

*Section 338 IPC can coexist in a case of single rash or negligent act. We think it can. We do not think that the two charges are mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused, then not only that the punishment is for the act but also for the resulting homicide and a case may fall within Section 299 or Section 300 depending upon the mental state of the accused viz. as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.*

**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 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 304-A 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.*

**42.** *A person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable*

man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under Section 304 Part II IPC. There is no incongruity, if simultaneously with the offence under Section 304 Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under Section 338 IPC.

**43.** In view of the above, in our opinion there is no impediment in law for an offender being charged for the offence under Section 304 Part II IPC and also under Sections 337 and 338 IPC. The two charges under Section 304 Part II IPC and Section 338 IPC can legally coexist in a case of single rash or negligent act where a rash or negligent act is done with the knowledge of likelihood of its dangerous consequences.

**44.** By charging the appellant for the offence under Section 304 Part II IPC and Section 338 IPC—which is legally permissible—no prejudice has been caused to him. The appellant was made fully aware of the charges against him and there is no failure of justice. We are, therefore, unable to accept the submission of Mr U.U. Lalit that by charging the appellant for the offences under Section 304 Part II IPC and Section 338 IPC for a rash or negligent act resulting in injuries to eight persons and at the same time committed with the knowledge resulting in death of seven persons, the appellant has been asked to face a legally impermissible course.

**51.** The above provision has come up for consideration before this Court on numerous occasions. It is not necessary to refer to all these decisions. Reference to a later decision of this Court in *Annareddy Sambasiva*

*Reddy [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] delivered by one of us (R.M. Lodha, J.) shall suffice. In paras 55-56 of the Report in Annareddy Sambasiva Reddy [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] it has been stated as follows: (SCC p. 567)*

*“55. In unmistakable terms, Section 464 specifies that a finding or sentence of a court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if the accused has not been adversely affected thereby. If the ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned.*

*56. A fair trial to the accused is a sine qua non in our criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hypertechnicalities. Every case must depend on its own merits and no straitjacket formula can be applied; the essential and important aspect to be kept in mind is: has omission to frame a specific charge resulted in prejudice to the accused.”*

**52.** *In light of the above legal position, if the charge under Section 304 Part II IPC framed against the appellant is seen, it would be clear that the ingredients of Section 304 Part II IPC are implicit in that charge. The omission of the words “in drunken condition” in the charge is not very material and, in any case, such omission has not at all resulted in prejudice to the appellant as he was fully aware of the prosecution evidence which consisted of drunken condition of the appellant at the time of incident.*

**78.** We have also carefully considered the evidence let in by the prosecution—the substance of which has been referred to above—and we find no justifiable ground to take a view different from that of the High Court. We agree with the conclusions of the High Court and have no hesitation in holding that the evidence and materials on record prove beyond reasonable doubt that the appellant can be attributed with knowledge that his act of driving the vehicle at a high speed in a rash or negligent manner was dangerous enough and he knew that one result would very likely be that people who were asleep on the pavement may be hit, should the vehicle go out of control.

**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.

**80.** The trial court convicted the accused of the offence under Section 337 IPC but acquitted him of the charge under Section 338 IPC. The High Court noticed that two injured persons, namely, PW 6 and PW 8 had injuries over the right front temporoparietal region of the size of 5 cm × 3 cm with scar deep with bleeding (Exts. 37 and 33 respectively). The High Court held that these were not simple injuries and were covered by

*grievous hurt under Section 320 IPC. We agree. Charge under Section 338 IPC against the appellant is clearly established.*

**81.** *Insofar as charge under Section 337 IPC is concerned, it is amply established from the prosecution evidence that PW 5, PW 7, PW 9 and PW 10 received various injuries; they suffered simple hurt. The trial court as well as the High Court was justified in convicting the appellant for the offence punishable under Section 337 IPC as well.”*

(iii) ***State of Maharashtra vs Salman Salim Khan and Another, (2004) 1 SCC 525.***

**“11.** *But for the fact that two courts below i.e. the Sessions Court and the High Court having gone into this issue at length and having expressed almost a conclusive opinion as to the nature of offence, we would not have interfered with the impugned order of the High Court because, as stated above, neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under Section 304-A or Section 304 Part II IPC except for the fact that the forum trying the charge might have been different, which by itself, in our opinion, would not cause any prejudice. This is because at any stage of the trial it would have been open to the court concerned to have altered the charge appropriately depending on the material that is brought before it in the form of evidence. But now by virtue of the impugned judgment of the High Court, even if in the course of the trial the Magistrate were to come to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under Section 304-A, it will not be possible for it to pass appropriate*

order. To that extent the prosecution case gets pre-empted.

**12.** We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the Apex Court, most of which were with reference to appeals arising out of convictions, we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time, we are also in agreement with the arguments of the learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable under Section 304 Part II IPC.”

(iv) **And the judgment of the Calcutta High Court in**  
**Vikram Chatterjee @ Bikram Chatterjee vs. The**  
**State of West Bengal & Anr., CRR 3241 of 2018**  
**with CRAN 3192 of 2018, on 13.02.2019.**

On considering the contention of both sides, this court relies upon a judgment of the Supreme Court which none of the parties herein have relied upon ....

The said judgment is very relevant in the facts and circumstances of the present case.

\* \* In **Mahadev Prasad Kaushik vs State of U.P. & Anr.**, Criminal Appeal No. 1625 of 2008 arising out of SLP (Crl) No. 2023 of 2007, on October 17, 2008, the Supreme Court held that:-

*“22. The question then is as regards issuance of summons under Section 304, IPC. Section 304 reads thus;*

***304. Punishment for culpable homicide not amounting to murder***

*Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

*or 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.*

**23.** Plain reading of the above section makes it clear that it is in two parts. The first part of the section is generally referred to as "**Section 304, Part I**", whereas the second

part as "**Section 304, Part II**". The first part applies where the accused causes bodily injury to the victim with **intention** to cause death; or with **intention** to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with **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.

**24.** *The Makers of the Code observed;*

*"The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed".*

**25.** *The Makers further stated;*

*"It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion".*

**26.** *Before Section 304 can be invoked, the following ingredients must be satisfied;*

(i) the death of the person must have been caused;

(ii) such death must have been caused by the act of the accused by causing bodily injury;

(iii) there must be an **intention** on the part of the accused

(a) to cause death; or

(b) to cause such bodily injury which is likely to cause death; (Part I) or

(iv) there must be **knowledge** on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).

**27.** Section 304A was inserted by the Indian Penal Code (Amendment) Act, 1870 (Act XXVII of 1870) and reads thus;

**304A. Causing death by negligence**

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**28.** The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC and covers those cases where death has been caused without '**intention**' or '**knowledge**'. The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act

done will in all probability result into death. It applies to acts which are **rash** or **negligent** and are directly the cause of death of another person.

**29.** There is thus distinction between Section 304 and Section 304A. Section 304A carves out 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 or culpable homicide amounting to murder under Section 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A 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. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

**30.** In *Empress v. Idu Beg*, (1881) ILR 3 All 776, Straight, J. made the following pertinent observations which have been quoted with approval by various Courts including this Court;

"Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has

*arisen, it was the imperative duty of the accused person to have adopted".*

**31.** *Though the term 'negligence' has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do."*

From the materials on record it transpires that **the parties to this case know to each other.**

**The deceased was also known to the accused persons.**

From materials in the case diary there is prima facie materials to show that the deceased (70 years) use to protest against the gambling, drinking and substance abuse by the accused persons.

The accused persons also allegedly threatened the deceased for his interference in their alleged illegal activities.

On the date and time of incident the accused persons on one motor-cycle crossed the complainant who was also on a motor-cycle. They were allegedly abusing someone.

**The deceased regularly went for evening walk on the road on which he was killed.**

The complainant allegedly saw the accident with his own eyes which happened on 04.12.2016.

**Though he filed the present case on 30.12.2016, an U.D Case no. 533/16 dated 04.12.2016 was started on the date of accident itself.**

He allegedly saw that the accused persons intentionally hit the deceased with the motor-cycle who tried to move out of the way.

The above facts prima facie make out a case against the accused petitioners that they had the intention and knowledge that this act might cause the death of the deceased, which is to be decided in trial by adducing evidence.

**Whether there was actually any intention or knowledge to kill the deceased for his protest against the illegal activities of the accused is subject to trial and to be decided on evidence.**

**\* \* In Dr Nallapareddy Sridhar Reddy vs The State of Andhra Pradesh & Ors., Criminal Appeal No. 1934 of 2019, arising out of SLP (Crl.) No. 3884 of 2019, on January 21, 2020, the Supreme Court held that:-**

**“14.** In order to adjudicate upon the dispute, it is necessary to refer to Section 216 of CrPC:

“216. Court may alter charge.—(1)

Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court,

to prejudice the accused in his defence or the prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

**15.** Section 216 appears in Chapter XVII of the CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase “add to any charge” in Sub-Section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done “at any time before judgment is pronounced”. SubSection (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the persecutor in the

conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-Section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 of the CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.

**16.** The decision of a two-judge Bench of this Court in **P Kartikalakshmi v Sri Ganesh, (2017) 3 SCC 347**, dealt with a case where during the course of a trial for an offence under Section 376 of the IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 of the IPC. Justice F M Ibrahim Kalifulla, while dealing with the power of the court to alter or add any charge, held:

“6. ... Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under

certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

(Emphasis supplied)

**17. In Anant Prakash Sinha v State of Haryana, (2016) 6 SCC 105**, a two judge Bench of this Court dealt with a situation where for commission of offences under Sections 498A and 323 of the IPC, an application was filed for framing an additional charge under Section 406 of the IPC against the husband and the mother-in law. After referring to various decisions of this Court that dealt with the power of the court to alter a charge, Justice Dipak Misra (as the learned Chief Justice then was), held:

“18. ... the court can change or alter the charge if there is defect or something is left out. **The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to**

**alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record.** It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial...”

(Emphasis supplied)

**18. In CBI v Karimullah Osan Khan, (2014) 11 SCC 538**, this Court dealt with a case where an application was filed under Section 216 of CrPC during the course of trial for addition of charges against the appellant under various provisions of the IPC, the Explosives Act 1884 and the Terrorist and Disruptive Activities (Prevention) Act 1987. Justice K S P Radhakrishnan, speaking for the Court, held thus:

**“17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions “at any**

**time” and before the “judgment is pronounced” would indicate that the power is very wide and can be exercised, in appropriate cases,** in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. **Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court.”**

(Emphasis supplied)

19. In **Jasvinder Saini v State (Govt of NCT of Delhi)**, (2013) 7 SCC 256, this Court dealt with the question whether the Trial Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B of the IPC. Justice T S Thakur (as he then was) speaking for the Court, held thus:

**“11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such**

**addition and/or alteration is made before the judgment is pronounced.** Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. **The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court."**

(Emphasis supplied)

**20.** From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads

the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

**21.** The appellant has relied upon a two-judge Bench decision of this Court in **Onkar Nath Mishra v The State, (2008) 2 SCC 561**, to substantiate the point that the ingredients of Sections 406 and 420 of the IPC have not been established. This Court while dealing with the nature of evaluation by a court at the stage of framing of charge, held thus:

**“11. It is trite that at the stage of framing of 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 face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there**

**is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out.**

At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

(Emphasis supplied)

**22.** In the present case, the High Court while directing the framing the additional charges has evaluated the material and evidence brought on record after investigation and held:

“LW1 is the father of the de facto complainant, who states that his son in law i.e., the first accused promised that he would look after his daughter at United Kingdom (UK) and promised to provide Doctor job at UK and claimed Rs.5 lakhs for the said purpose and received the same and he took his daughter to the UK. He states that his son-in-law made him believe and received Rs.5 lakhs in the presence of elders. He states that he could not mention about the cheating done by his son-inlaw, when he was examined earlier. LW13, who is an independent witness, also supports the version of LW1 and states that Rs.5 lakhs were received by A1 with a promise that he would secure doctor job to the complainant’s daughter. He states that A1 cheated LW1, stating that he would provide job and received Rs.5 lakhs. LW14, also is an independent witness and he

supported the version of LW13. He further states that A1 left his wife and child in India and went away after receiving Rs.5 lakhs.

Hence, from the above facts, stated by LWs. 13 and 14, prima facie, the version of LW1 that he gave Rs.5 lakhs to A1 on a promise that he would provide a job to his daughter and that A1 did not provide any job and cheated him, receives support from LWs. 13 and 14. **When the amount is entrusted to A1, with a promise to provide a job and when he fails to provide the job and does not return the amount, it can be made out that A1 did not have any intention to provide job to his wife and that he utilised the amount for a purpose other than the purpose for which he collected the amount from LW1, which would suffice to attract the offences under Sections 406 and 420 IPC. Whether there is truth in the improved version of LW.1 and what have been the reasons for his lapse in not stating the same in his earlier statement, can be adjudicated at the time of trial.** It is also evidence from the record that the additional charge sheet filed by the investigating officer, missed the attention of the lower court due to which the additional charges could not be framed.”

(Emphasis supplied)”

**Section 222 of the Code of Criminal Procedure, lays down:-**

***“222. When offence proved included in offence charged.***

*(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.*

*(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.*

*(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.*

*(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”*

**\* \* In Virendra Kumar vs State of U.P., Criminal Appeal No.**

**69 of 2007, on 16<sup>th</sup> January, 2007, the Court held that:-**

*“The residual question relates to the applicability of Section 113A of the Evidence Act and the question as to whether in the absence of the specific charge under Section 306 IPC, the appellant could be convicted though he was only charged in terms of Section 302 IPC.*

*So far as the question as to the effect of no charge having been framed under Section 306 is concerned the effect of Section 222(2) and Section 464 of Cr. P.C. cannot be lost sight of. In Dalbir Singh's case (supra) it was inter alia noted as follows:*

*"Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with Irregular Proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Cr.P.C. deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a*

*failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In Lakhjit Singh (supra) though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In Sangaraboina Sreenu (supra) the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside.*

*17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC,*

*he cannot be convicted for the offence under Section 306 IPC."*

*It is to be noted that in view of apparent conflict in the views expressed by two Judge Bench decisions in Sangaraboina Sreenu v. State of A.P. (1997(5) SCC 348) and Lakhjit Singh and Another v. State of Punjab (1994 Supp(1) SCC 173) the matter was referred to a three Judge Bench in Dalbir Singh's case (supra) There is no dispute that the circumstances are relatable to Section 306 IPC which were clearly put to the appellant during his examination under Section 313 of Cr.P.C."*

**Now in the present case, the offence of Section 304A IPC is a minor offence which is part of the major offence under Section 304IPC Section 222 of the Cr.P.C. can be made applicable at the relevant stage of trial, in respect of the accused persons if the evidence and the materials prove that it is the minor offence for which the accused is to be punished.**

Alternatively if the charge under Section 304 IPC is altered at this stage to Section 304A IPC, then the only way out for the trial court would be under Section 216 of the Cr.P.C which provides for alteration and addition of charge.

Section 222 Cr.P.C. is more applicable to the present case as in case the charge is **altered under Section 216 Cr.P.C. at any time before the judgment** it may effect the accuseds who may expect that they shall only be punished for the minor offence and not a more

serious offence which is sought to be added by way of addition and alteration of charge almost at the end of trial.

The Judgment of the Supreme Court in **Ghulam Hassan Beigh vs Mohammad Maqbool Magrey and Others, 2022 SCC Online SC 913, Criminal Appeal No. of 2022 (arising out of SLP (Criminal) No. 4599 of 2021) on July 26, 2022**, is very relevant here:-

*“32. The prosecution should have been given opportunity to prove all the relevant facts including the post mortem report through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It was too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no serious injuries were noted in the post mortem report, the death of the deceased on account of “cardio respiratory failure” cannot be said to be having any nexus with the incident in question.*

*33. Whether the case falls under Section 302 or 304 Part II, IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the post mortem report on record. The High Court*

also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

**34.** We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

**35. Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution**

*will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the chargesheet. Such approach of the trial court at times may prove to be more rationale and prudent.”*

**In State of Maharashtra vs. Salman Salim Khan and Another, 2003 SCC OnLine SC 1424, Criminal Appeal No. 1508 of 2003, on December 18, 2003, the Court also held that:-**

*“12. We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and*

*acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the Apex Court, most of which were with reference to appeals arising out of convictions, we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time, we are also in agreement with the arguments of the learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable under Section 304 Part II IPC.”*

**In the present case**, only after trial the truthfulness, sufficiency and acceptability of the evidence can adjudicated (in the words of the Supreme Court in **Salman Salim Khan (Supra)**).

In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and*

41 of the above judgment where the following was stated:

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in

*quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'*

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :*

*'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'* Above Category 7 is clearly attracted in the facts

of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

**16.** The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in ***State of Haryana and Others v. Bhajan Lal and Others*, 1992 Supp. (1) 335** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if

*they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and*

*with a view to spite him due to private and personal grudge.”*

**17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, 2021 SCC Online SC 315.”**

Accordingly, the order dated 06.02.2019 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Asansol, Paschim Bardhaman, in connection with G.R. Case No. 3333/16 and S.C. Case No. 150/17, in Salanpur Police Station Case No. 162/2016 dated 30.12.2016 under Sections 279/304 of the Indian Penal Code, **is affirmed.**

**CRR 989 of 2019 is dismissed.**

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**