



Judgment

486 appeals563 and 735.04

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

**CRIMINAL APPEAL NO.563 OF 2004
AND
CRIMINAL APPEAL NO.735 OF 2004**

CRIMINAL APPEAL NO.563 OF 2004

Sangit @ Chhotu s/o Haridas
Ramteke, aged – 30 years, occupation:
agriculturist, r/o Borgaon-Meghe,
PS Sewagram, district Wardha,
(at present in jail). **Appellant.**

:: VERSUS ::

State of Maharashtra,
through PSO PS Sewagram, Wardha. **Respondent.**

Mrs.Anjali Joshi, Counsel for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CRIMINAL APPEAL NO.735 OF 2004

State of Maharashtra,
through Police Station Officer,
Police Station Sewagram,
district Wardha. **Appellant.**

:: VERSUS ::

1. Sangit @ Chhotu s/o Haridas Ramteke,
aged about 28 years.

2. Vijay s/o Haridas Ramteke,
aged about 42 years.

3. Sanjay s/o Haridas Ramteke,
aged about 37 years.

All r/o Borgaon (Meghe),
Police Station Sewagram,
district Wardha.

..... Respondents.

Shri M.J.Khan, Additional Public Prosecutor for the
Appellant/State.

Mrs.Anjali Joshi, Counsel for the Respondents.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 19/09/2025

PRONOUNCED ON : 10/10/2025

COMMON JUDGMENT (Per : Urmila Joshi-Phalke)

1. Both these appeals arise out of judgment and
order dated 2.9.2004 passed by learned 1st Ad hoc,
Additional Sessions Judge, Wardha (learned Judge of
the trial court) in Sessions Trial No.189/2002.

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2. By the said judgment impugned, Sangit @ Chhotu s/o Haridas Ramteke (appellant in Criminal Appeal No.563/2004 and respondent No.1 in Criminal Appeal No.735/2004) is convicted under Section 304-II of the IPC and sentenced to suffer rigorous imprisonment for 5 years. He is also convicted under Section 324 of the IPC and sentenced to suffer rigorous imprisonment for 1 year.

3. Criminal Appeal No.563/2004 is preferred by accused Sangit Ramteke.

Whereas, Criminal Appeal No.735/2004 is preferred by the State for quashing the judgment and order impugned acquitting accused persons Sangit Ramteke, Vijay Haridas Ramteke, and Sanjay Haridas Ramteke of offences under Sections 302 and 307 of the IPC.

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4. Brief facts of the prosecution case are as under:

Vinod Choudhari (the informant) is resident of village Borgaon (Meghe) and doing business of motor rewinding. Ramesh Pyarelal Prajapati (the deceased) is his maternal uncle. Accused persons Sangit Ramteke; Vijay Ramteke, and Sanjay Ramteke are brothers and also resident of the same village. There was a political rivalry between the informant and the accused persons on account of elections of the Panchayat Samiti and the Zilla Parishad. In the elections, Manoj, who is younger brother of the informant, came to be elected as Member of the Panchayat Samiti. He has contested the election from the National Congress. At the same time, accused Sanjay Ramteke was also Member of the Panchayat Samiti and accused Vijay Ramteke was Up-Sarpanch. As per the allegations, as Manoj was member of Panchayat

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Samiti, he was getting contracts from the Panchayat Samiti and accused Vijay Ramteke was demanding commission from him for getting the contracts. The deceased was also working as contractor from whom also accused Vijay Ramteke demanded Rs.5000/- as commission which was not paid and on that account, the dispute arose between the informant, Manoj and accused persons. As per the allegations, accused Vijay Ramteke and Sanjay Ramteke had threatened the informant and his maternal uncle.

5. On 3.7.2002, the informant had gone along with his father-in-law Prakash Prajapati to attend the funeral ceremony of wife of Sukhlal Prajapati on his motorcycle. After attending the said funeral, he was returning on the motorcycle and at the relevant time, the deceased was riding the motorcycle, whereas the informant was pillion rider. They saw a block-yellow

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colour jeep bearing registration No.MH-32-B/615 parked at Waigaon. When both were proceeding on the motorcycle, the said passenger jeep came from behind and gave dash to the motorcycle. Due to which, they fell down and the deceased fell down in the middle road and sustained grievous injuries. The informant has also sustained the injuries in the said incident. It is alleged that due to the political rivalry between them, accused Sangit Ramteke driven the said passenger jeep in a rash and negligent manner with an intention to kill them and caused the death of the deceased. On the basis of the said report, the police registered the offence against accused Sangit Ramteke as well as other co-accused.

6. After registration of the crime, the investigating officer has drawn the inquest panchanama and spot panchanama. He has collected blood stains from the spot of the incident by drawing the seizure

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memo. He has also obtained blood samples of the deceased as well as the informant and the accused persons. After collecting the medical certificate of the informant and postmortem report, he completed the investigation and submitted chargesheet against the accused persons. The incriminating articles were forwarded to the Chemical Analyzer. The CA Certificate is also included subsequently to the investigation papers.

7. As the offences under Sections 302 and 307 are exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Sessions Court. Learned Judge of the trial court framed the charge vide Exh.30. The contents of the charge are read over and explained to the accused persons in vernacular. They pleaded not guilty and claimed to be tried.

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8. In support of the prosecution case, the prosecution has examined in all 13 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Vitthal Shende	Exh.20
2	Dhnyaneshwar Shende	Exh.22
3	Gajanan Jadhao	Exh.23
4	Sheshrao Pardake	Exh.27
5	Vinod Choudhari, the informant	Exh.30
6	Manoj Choudhari, the brother of the informant	Exh.32
7	Anand Shiwankar, PSI	Exh.36
8	Gopalsingh Kuware	Exh.48
9	Deepak Choudhari	Exh.50
10	Dr.Chakkilala Vyankateshwerlu, Medical Officer	Exh.51
11	Manoj Mendhe	Exh.53
12	Shaileja Kale, Medical Officer	Exh.57
13	Arjun Laxman Bhand, Investigating Officer	Exh.59

9. Besides the oral evidence, the prosecution mainly relied upon inquest panchanama Exh.21, spot

panchanama Exh.24, seizure memos Exhs.25, 26, 28, and 29, medical certificates of accused persons Exhs.33 to 35, FIR Exh.37, report Exh.31, postmortem report Exh.52, medical certificates of injured Exh.56 and 58, requisitions to medical officer Exhs.62 and 64, and CA Report Exh.61.

10. All the incriminating evidence is put to the accused persons in order to obtain their explanations regarding the evidence appearing against them. The defence of the accused persons is of total denial and of false implication due to the previous enmity. In support of their contentions, three defence witnesses were examined mainly DW1 Vilas Dhawade vide Exh.79, DW2 Arun Lohakare Exh.81, and DW3 Vinod Rokde vide Exh.84.

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11. After hearing learned counsel appearing for both the sides, learned Judge of the trial court held accused Sangit Ramteke guilty for the offence punishable under Section 304-II of the IPC and sentenced to suffer rigorous imprisonment for 5 years. He is also convicted under Section 324 of the IPC and sentenced to suffer rigorous imprisonment for 1 year. Accused Vijay Ramteke and accused Sanjay Ramteke were acquitted from the charges.

12. Being aggrieved and dissatisfied with the same, Criminal Appeal No.563/2004 is preferred by accused Sangit Ramteke on the ground that learned Judge of the trial court committed error in holding that the accused caused death of the deceased and it is culpable homicide not amounting to murder. In fact, there is no evidence to show that the death of the deceased is caused by the accused and he was driving

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the said vehicle at the relevant time. Though independent witnesses are available, which are not examined, and merely because there was enmity between the informant and the accused persons, he is falsely implicated.

13. On the other hand, Criminal Appeal No.735/2004 is preferred by the State for enhancement of sentence on the ground that learned Judge of the trial court ignored the fact that there was political rivalry between the deceased, informant and the accused persons. It is an admitted position that there was political rivalry also between them. Learned Judge of the trial court wrongly came to the conclusion that it is culpable homicide not amounting to murder. On the contrary, evidence of eyewitness informant PW5 Vinod Choudhari, who is also an injured witness, sufficiently shows that with an intention to kill them, the accused

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has driven the vehicle and, therefore, there was intention as well as knowledge on the part of the accused which covers under culpable homicide amounting to murder.

14. Heard learned counsel Mrs.Anjali Joshi for accused Sangit Ramteke in Criminal Appeal No.563/2004 and respondents in Criminal Appeal No.735/2004 and learned Additional Public Prosecutor Shri Khan for the State.

15. Learned counsel Mrs.Anjali Joshi, submitted that though there was a previous enmity between accused Vijay Ramteke and Sanjay Ramteke on one side and the informant and deceased on the other side, the alleged threats of killing are never at the instance of accused Sangit Ramteke. He was never involved in politics. He was having no criminal antecedents. He

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was not office bearer of Gram Panchayat or Panchayat Samiti. There is no evidence showing that there was a previous enmity between the accused and the informant and the deceased. She further submitted that the evidence on record shows that the alleged incident has taken place on a heavy traffic road. Though the evidence shows that there were various shops, no independent witness is examined by the prosecution. The prosecution story is entirely based on the evidence of the informant, who is interested witness. There being previous enmity, the accused is falsely implicated by concocting the story. Even, accepting the evidence as it is, at the most, it is merely an accident. There was neither knowledge nor intention to kill the deceased. At the most, it would be error in judgment which resulted into the accident and, therefore, the judgment impugned deserves to be quashed. She further pointed out that

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during pendency of these appeals, accused Sanjay Ramteke, against whom the State has preferred the appeal, is reported to be dead on 25.1.2020. The order as to the abatement, as far as accused Sanjay Ramteke is concerned, is already passed.

16. *Per contra*, learned Additional Public Prosecutor for the State vehemently submitted that the evidence of PW5 Vinod Choudhari, PW6 Manoj Choudhari, and PW9 Deepak Choudhari specifically states about the previous enmity between the injured, deceased, and the accused persons. On the day of the incident, i.e. 3.7.2002, accused Sangit Ramteke has driven the vehicle rashly and negligently and gave dash to the motorcycle of the deceased. Due to the severe dash, the deceased thrown on the road and received grievous injuries and succumbed to the injuries. The informant has also sustained the injuries. The informant

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is the eyewitness of the said incident. Nothing is brought on record to show that there is any reason for the informant to implicate the accused falsely. The ownership of the vehicle is of accused Sangit Ramteke. Accused Sangit Ramteke was driving the vehicle at the relevant. The FIR is also lodged immediately. There is nothing on record to disbelieve the witnesses. The spot panchanama shows that the manner in which the accident occurred. The panchanamas of the vehicles also disclose regarding the condition of the vehicles which sufficiently shows that the vehicle was driven with an intention to cause death of the deceased and, therefore, the prosecution established that the act of accused Sangit Ramteke covers under the culpable homicide amounting to murder. In view of that, Criminal Appeal No.563/2004 deserves to be dismissed

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and Criminal Appeal No.735/2004 filed by the State deserves to allowed.

17. After hearing both the sides and perusing the evidence adduced as well as submissions, aspect, as to whether the death of the deceased is culpable homicide amounting to murder or culpable homicide not amounting to murder, is under consideration. Whether the death of the deceased is homicidal, is also required to be considered.

18. As far as the medical evidence is concerned, PW10 Dr.Chakkilala Vyankateshwarlu, who has conducted the postmortem, stated that on 4.7.2002, dead body of the deceased was brought to him for conducting postmortem. On examination, he found external injuries on his person:

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“(1) There are multiple abrasions over the scalp 13 cm x 4 cm, 6 cm x 4 cm, 3 cm x 2 cm;

(2) Abrasion on right leg 20 cm x 10 cm;

(3) Abrasion on right knee 4 cm X 2 cm;

(4) Fractured of both bones of right leg;

(5) Multiple abrasions of left knee;

(6) Fracture of both bones of left leg;

(7) Abrasion on right fore-arm 3 cm x 4 cm;

(8) Abrasions on chest left side 20 cm x 10 cm;

(9) Abrasion on chest right side 20 cm x 8 cm;

(10) Fractured ribs on left side 4, 5, 7 and number;

(11) Fractured ribs on right side 4, 5 and 6 number;

(12) Abrasion on right elbow 6 cm x 2 cm;

(13) Lacerated wound on fore-arm 4 cm x 2 cm;

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(14) Lacerated wound at the base of the nose.

On internal examination, he found following injuries:

(1) Both lungs are injured. Lungs are pale. Chest cavity is filled with blood;

(2) Heart is normal in size, but the shape of the left ventricle disturbed due to injury; and

(3) There is injury over left ventricle 5 cm in length, 1½ cm in width.

He opined that the probable cause of death is due to hypo-volumic shock following to injury anterior wall of left ventricle and multiple injuries to both lungs and multiple fracture on both legs. Accordingly, he prepared the postmortem notes, which are at Exh.52. He further stated that injuries mentioned by him on scalp, legs, knees, and forearms can be caused due to hard and blunt object. He also opined that it is possible

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that such injuries can be caused if the jeep gives dash to the motorcycle. He has obtained the blood samples of accused persons which are at Exhs.33 to 34.

His cross examination shows that such injuries noted by him are possible due to accident also. He further admitted that he has witnessed most of the injuries on the right side of the body of the deceased.

Thus, not only the cross examination but also the chief examination of this witness shows that the injuries noted by him are possible due to the accident or due to dash given by the vehicle to the motorcycle rider.

19. Now, it has to be seen, whether there is any other evidence adduced by the prosecution to establish that the death of the deceased is culpable homicide amounting to murder.

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20. To prove the charge levelled against accused persons, the prosecution mainly placed reliance on the evidence of PW5 Vinod Choudhari, PW6 Manoj Choudhari, and PW9 Deepak Choudhari.

The evidence of PW5 Vinod Choudhari, discloses that there was previous enmity between him, the deceased and the accused persons. As per the allegations, accused Sanjay Ramteke was asking from them commission as they were working as contractors and carrying out works for the Zilla Parishad and Panchayat Samiti. He deposed that on the day of the incident i.e. 3.7.2002, he along with the deceased were returning home on the motorcycle by attending funeral of their relative. At the relevant time, the jeep proceeding from Waigaon to Wardha reached in a high speed from Waigaon towards Wardha from their back side. Accused Sangit Ramteke was driving the said jeep.

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His two brothers were also in the said jeep. The said jeep gave dash to the motorcycle from the centre of that jeep. The intention of the accused to kill them. Due to the dash, the deceased fell on the centre of the road and sustained injuries and succumbed to the injuries. He also sustained injuries in the said incident. He took the deceased in an auto in General Hospital, Wardha. He further deposed that his brother Manoj is Gram Panchayat Member of Ward No.5 of Borgaon and also Member of Panchayat Samiti, Wardha. Prior to his becoming Member, accused Sanjay Ramteke was Member of Gram Panchayat of Borgaon Meghe. Accused Vijay Ramteke was Up-Sarpanch of Borgaon Meghe. The contract of laying cement road in ward No.5 of Borgaon was given to the deceased and accused Sanjay Ramteke demanded commission of Rs.5000/- from the deceased, but Manoj declined as a result of which there

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was a scuffle between them. Accused Sanjay Ramteke made again the demand of commission and threatened that in case it is not paid, he would not pass bill and also threatened to kill the deceased. When the said jeep dashed to their motorcycle, accused Sangit Ramteke, his brother accused Sanjay Ramteke were sitting in front seat of that jeep. He lodged the report which is at Exh.31.

The evidence of PW6 Manoj Choudhari, is also on the similar line. He deposed that the deceased is his maternal uncle. There was previous enmity between the deceased, the informant at one side and on the other side accused Sanjay and Vijay were involved in corruption and they have raised objection against these two accused about their behaviour and conduct. He had made complaints against both of them to the higher authority. The deceased was engaged as contractor for

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laying of cement road. Accused Sanjay and Vijay asked commission as a bribe from him.

The evidence of PW9 Deepak Choudhari is also similar as far as the incident is concerned. He stated that on 3.7.2022, his maternal-uncle and his brother had been to attend the funeral of their relative. One truck filled with sand came in front of his house. He heard voice of his brother Vinod and thereafter, they took out his maternal uncle who was in an injured condition and his brother disclosed that all the accused persons gave dash to the deceased by passenger jeep when they were proceeding on motorcycle.

These three witnesses are cross examined at length. During the cross examination, PW5 Vinod Choudhari stated that the jeep proceeding in high speed gave dash to the motorcycle due to which the deceased

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fell on the road, whereas he had at some distance on road. Though he stated that accused Sangit took his jeep in reverse direction and thereafter crossed that jeep from the body of the deceased, the same is omission which is not narrated by him in his report. His cross examination further shows that his brother Manoj had managed funds from the MLA Funds to allot work of laying of cement road in Borgaon in favour of the deceased. Regarding the said allotment and construction of road, accused Sanjay Ramteke and accused Vijay were raising objections all the while. He stated that he has no knowledge whether they had made complaint against the deceased and him to the Panchayat Samiti regarding allotment of the said work. He is also not having knowledge that on the say of two accused persons that as the construction work of road was of a inferior quality, the accused were not passing

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bills of the deceased and they were raising objection and, therefore, the payment was not made. He has also admitted that accused Sanjay and accused Vijay were making complaints against them that his house was constructed on encroached land and in that regard Sarpanch of the Grampanchayat Borgaon had issued show cause notice as to why house on encroached land should not be dismantled. It further came in his evidence that the deceased was basically resident of Akola district. Accused Sanjay has lodged the report against him and his brother Manoj on 26.4.2002 in Police Station Wardha that they have assaulted him by means of sword and dagger and Crime No.2734/2002 was registered against both of them and they are facing trial. It further came in his evidence that against his brothers also the crime is registered and they are facing trial. It further came in his evidence that accused Sangit

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used to ply his taxi jeep on Wardha-Hinganghat Road. He has also admitted that he was not having knowledge about registration number of the taxi jeep of accused Sangit. It further came in the evidence that the accident took place at Waigaon-Selu Fata which is at about three and half kilometers from their village. He further admitted that they heard loud noise and immediately thereafter he and the deceased were thrown from the motorcycle. The said motorcycle and he, after the incident, crossed the distance of about forty meters on that Hinganghat-Wardha Road. Thus, cross examination shows that the dash was given from the backside of their motorcycle and immediately after the dash, they were thrown on the ground. His evidence further shows that there was previous enmity between the accused and the informant and various cases are filed against each other.

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21. Coming to the evidence of PW6 Manoj Choudhari, especially the cross examination, admittedly, he was not present at the time of the incident. He has stated about the previous enmity between deceased and the accused that when accused Sanjay was Member of Panchayat Samiti, Wardha, that time the work of construction of cement work in Borgaon was sanctioned and given to the deceased. It further came in his evidence that accused Sanjay was involved in various activities like corruption. It further came in his evidence that they belong to the different parties and, therefore, there is enmity between them.

22. The evidence of PW9 Deepak Choudhari, who is not eyewitness of the incident, shows about previous enmity and also admitted that the quarrel took place between Manoj, Vinod, and the deceased on one hand and accused Sanjay on the other hand. He further

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admitted that he came to know about the incident from statement given by informant PW5 Vinod Choudhari to the Police. He specifically admitted that he is having enmity with the accused persons.

23. Besides the oral evidence, as far as the injuries sustained by informant PW5 Vinod Choudhari are concerned, the evidence of PW12 Dr. Shaileja Kale shows that she was working as medical officer in Civil Hospital at Wardha. She examined PW5 Vinod and found three injuries on his person i.e. (i) lacerated wound 3 cm x 2 cm x 2 cm on fore-head left side, (ii) abrasion 3 cm x 3 cm on the back of left elbow joint, and (iii) multiple abrasions all over the back. The injuries noticed by her could be caused by hard and blunt object.

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During the cross examination, she has admitted that such injuries are possible if a person falls on tar road. It is possible that such injuries can take place if a person who is riding two wheeler falls on the road due to bursting of tyre.

Thus, the said medical officer has also admitted that such injuries are possible by accident.

24. Besides the evidence of these witnesses, the prosecution placed reliance on the evidence of PW1 1 Vitthal Shende who acted as a pancha. He has not supported the prosecution case and left loyalty towards the prosecution.

25. PW2 Dhnyaneshwar Shende, who has also acted as pancha on inquest panchanama, has also not supported the prosecution case.

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26. PW3 Gajanan Jadhao, has acted as a pancha on various seizure memos. As per his evidence, he along with police and other panchas visited the spot of the incident. He inspected the spot and saw a motorcycle and blood stains on road. The tyre marks are also noted by him at that place. They found that the motorcycle in damage condition. Accordingly, they drawn panchanama Exh.24. The seizure memo of collection of blood samples from the spot is at Exh.25 and the panchanama as to the offending vehicle is at Exh.26.

His cross examination shows that, the spot was located on Hinganghat-Waigaon-Wardha Road. There used to be heavy traffic of vehicles on this road since morning till night. Near the spot, Hinganghat-Wardha Road runs in north-south in direction. From the same spot, there is a road proceeding in eastern direction and reaches to village Selu-Kate. The said

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motorcycle was found lying North-South in direction on that State Highway. The said motorcycle was lying State Highway towards the direction wherefrom that road proceeding to Selu-Kate leads. The police persons were already present at the spot.

27. The recital of the panchanama also shows that there were brake marks and tyre marks and the said tyre marks of skidding is visible on the road upto the distance of 44 meters towards South.

28. PW4 Sheshrao Pardake, who has also acted as a pancha, has not supported the prosecution case.

29. PW7 Anand Shiwankar, is PSI. He reached to the General Hospital and recorded statement of informant PW5 Vinod Choudhari, which is at Exh.31, on the basis of which FIR was lodged. He has admitted that the information regarding the accident was received in

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Sewagram Police Station at about 5:30 to 6:00 pm.

Entry regarding that fact was taken in station diary.

30. PW8 Gopalsingh Kuware, is another investigating officer who has drawn the inquest panchanama, which is at Exh.21.

31. PW11 Manoj Mendhe, stated on 3.7.2002, he has taken the passenger jeep of the accused persons along with one Ganu conductor. As to rest of contentions, he has not supported the prosecution case.

He admitted that he is working as driver on black and yellow passenger jeep owned by accused Sangit Ramteke and was plying the said jeep from Wardha to Hinganghat. He admitted that prior to 3.7.2002, his passenger jeep had received a dash from one auto and he and the owner of the auto-rickshaw were called by the police for amicable settlement.

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32. PW13 Arjun Bhand, is investigating officer who has carried out the investigation carried out by him. During his cross examination, he admitted that the spot of the incident is located at square of Selu-Kate. Selu-Kate is towards the East of the spot and is at a distance of one and half kilometers. Entry was taken as to information of the accident in the station diary. He prepared panchanama of the spot of the incident. Initially, AD enquiry was registered regarding the said incident. He also admitted about the tyre marks towards the Eastern side of the road. He admitted that rear side tyre was punctured. He admitted that he has seen the broken pieces of glass of indicators on the ground and front mud-guard of the jeep was bent. He also admitted that witness Manoj has not stated before him that he had lodged complaints that the accused persons were giving threats to him. He has not stated

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before him that accused Sangit and Vijay demanded amount of Rs.5000/- from the deceased and they became successful in stopping the work of construction of road. He stated about political enmity.

33. On the basis of the above evidence, the prosecution claimed that there was an intention of the accused persons to commit the murder of the deceased due to the previous enmity and to execute the act on 3.7.2002, accused Sangit Ramteke has driven the jeep in a high speed and intentionally gave dash from the backside of the motorcycle and at the relevant time, other two accused persons were also present in the jeep and, therefore, the act of the accused persons covers under culpable homicide amounting to murder.

34. Learned Additional Public Prosecutor for the State invited our attention to the evidence of PW5 Vinod

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Choudhari, PW6 Manoj Choudhari, and PW9 Deepak Choudhari. There is no dispute as to previous enmity between the accused persons and the informant. The enmity is of political in nature. The various complaints are filed against each other.

35. It is a settled law that enmity is a double-edged weapon. It is true that it can be the motive for the accused to commit the offence of murder. At the same time, possibility of false implication due to previous enmity cannot be ruled out and, therefore, careful scrutiny of the evidence is required.

36. On going through the evidence of PW5 Vinod Choudhari, PW6 Manoj Choudhari, and PW9 Deepak Choudhari, it shows that there was previous enmity. As far as the evidence that the accused have demanded the commission from them is an improvement, which is not

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stated by PW6 Manoj Choudhari in his police statement. The improvement made by PW5 Vinod Choudhari that accused Sangit Ramteke, after giving dash to the motorcycle, took his jeep in reverse direction and thereafter crossed that jeep from the body of the deceased, has not stated while lodging the FIR.

37. In the light of the previous enmity, whether the act of the accused persons covers under the culpable homicide amounting to murder.

38. Cross examination of informant PW5 Vinod Choudhari itself shows that the jeep gave dash to the motorcycle from the backside. There was no opportunity for him regarding the speed of the vehicle. His cross examination specifically shows that he was not having knowledge that Manoj was appointed as driver on the taxi of the accused. He is knowing the

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registration number of the taxi jeep. His cross examination further shows that after the dash to the motorcycle by the taxi jeep, he was thrown on the road at 40 feet. Admittedly, his evidence shows as soon as the dash was given to the motorcycle, he came to know that their motorcycle was dashed by the jeep owned by the accused.

39. The evidence of informant PW5 Vinod Choudhari is to be appreciated in the light of the evidence of PW3 Gajanan Jadhao, who has acted as a pancha on spot panchanama. The evidence of PW3 Gajanan Jadhao shows that he had witnessed the tyre marks on the spot of the incident. His cross examination shows that at the spot of the incident, there used to be heavy traffic of vehicles. Near the spot, there "T" Shape road as the Selu-Kate Road joins the main road. The motorcycle was lying North-South in direction. The

recital of the panchanama also shows that tyre marks are seen partly turned to the East Side of the road and visible on the road upto the distance of 44 meters.

40. The evidence of PW3 Gajanan Jadhao is further required to be appreciated in the light of admission given by PW10 Dr.Chakkilala Vyankateshwarlu who has admitted that such type of injuries can be caused if vehicle gives dash to the motorcycle rider. He further admitted during the cross examination such injuries noted by him are possible due to accident also. He further admitted that most of the injuries were on the right side of the body of the deceased.

41. PW12 Dr.Shaileja Kale, also admitted that such injuries are possible if a person who is riding two wheeler falls on the road due to bursting of tyre.

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42. Thus, as far as the intention, which is alleged by informant PW5 Vinod Choudhari, is concerned, there is no evidence on record to show that with an intention to kill the deceased, the vehicle was driven by accused Sangit Ramteke. Admittedly, knowledge, that driving of the vehicle in excessive speed would result into an accident, can be attributable to the accused persons.

43. Learned Judge of the trial court has considered this aspect and held that as far as intention is concerned, admittedly, there is no evidence to show that the vehicle was driven by accused Sangit Ramteke with an intention to cause death of the deceased, but act of the accused, that driving of the vehicle in a rash and negligent manner in excessive speed, is sufficient to attract the knowledge that he is having knowledge that this act can cause death of the deceased.

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44. The culpable homicide is defined in Section 299 of the Indian Penal Code and it is genus. Whereas, the murder defined in Section 300 of the Indian Penal Code and it is specie. Under Section 299 of the Indian Penal Code, whoever causes death with an intention or knowledge specified in that section, commits offence of culpable homicide. However, since culpable homicide is only genus, it includes two forms; one is a graver offence which amounts to 'murder' and lesser one which does not amount to 'murder'. It can be seen that, therefore, though the offence of culpable homicide is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the Indian Penal Code. In view of this scheme, therefore, every act

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of homicide falls within the definition of culpable homicide under Section 299 of the Indian Penal Code. Section 300 of the Indian Penal Code on the one hand mentions that a homicide is murder. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is culpable homicide, but it does not fall within the definition of murder and if it falls under any of exceptions to that section, the offence is punishable under Section 304 of the Indian Penal Code. Once, it is held that the offence falls under

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Section 304 of the Indian Penal Code, the punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the Indian Penal Code, otherwise, the offence falls under Part-II of Section 304 of the Indian Penal Code.

45. As observed earlier, the admission given by informant PW5 Vinod Choudhari, recital of the spot panchanama, the evidence of PW3 Gajanan Jadhao who acted as a pancha on spot panchanama, and the admission given by the medical officer, are sufficient to show that the death of the deceased is caused due to dash of the jeep owned by accused Sangit Ramteke and driven by him in excessive speed without considering the road condition. On the basis of the evidence

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adduced, it can be inferred that he was having knowledge that this act can cause a death of a person.

46. The said aspect is considered by the Hon'ble Apex Court in the case of **Naresh Giri v. State of M.P.**, reported in (2008)1 SCC 791 wherein it is observed that, "a man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from the act, but nevertheless continues in the performance of that act."

47. In the case of **Anbazhagan vs. State represented by the Inspector of Police**, reported in 2023 SCC OnLine SC 857 also, while considering the aspect of "intention" and "knowledge", the Hon'ble Apex Court observed that the word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man. Intention, which is a state

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of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by *res gestae*, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are that 1. the nature of the weapon used; 2. the place where the injuries were inflicted; 3. the nature of the injuries caused, and 4. the opportunity available which the accused gets.

By referring its earlier decision in the case of **Smt. Mathri v. State of Punjab, AIR 1964 SC 986**, the Hon'ble Apex Court observed that the word "intent" by its etymology, seems to have metaphorical allusion to

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archery, and implies "aim" and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which, the action would not have been taken. While distinguishing between "motive", "intention" and "knowledge", "motive" is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had

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led to a certain amount of confusion. A man's intention has to be inferred from what he does. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death. Proof of such knowledge throws light upon his intention. On the other hand, awareness is termed as "knowledge". The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where *mens rea* is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow. the knowledge that specified consequences would result or could result by doing an

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act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow or will follow, it does not necessarily mean that he intended such consequences and acted with such intention. Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end.

48. With the above proposition, if the evidence in the present case is taken into consideration, and the attending circumstances are looked into, admittedly, there is nothing on record to show that there was any overt act on the part of the accused persons which would show that the intention of the accused was only to cause death of the deceased or informant PW5 Vinod Choudhari. There is no single circumstance from which it can be gathered that there was no any other intention

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on the part of the accused persons but to cause death of the deceased. Merely because there was a previous enmity, that by itself is not sufficient to infer that the jeep was driven in such a manner to cause death of the deceased or the informant.

49. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether

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there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.

50. Difference between two parts of Section 304 is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC. The word 'likely' means probably and it is distinguished from more 'possibly'.

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When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

51. After applying the above principle and while determining the question, admittedly, the facts of the present case and circumstances under which the alleged incident has taken place, are sufficient to show that accused Sangit Ramteke was having knowledge that driving of the jeep would endanger human lives and without taking care of the same, he has driven the vehicle. In such circumstances, the said act would cover under Section 304-II of the IPC.

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52. Insofar as the facts of the present case are concerned, there was previous enmity between the accused persons and the deceased and the informant. However, there is no evidence on record to show that the enmity was of such a nature that the accused persons with an intention to cause death of the deceased or the informant has driven the jeep and gave dash to the motorcycle.

53. Admittedly, the evidence of informant PW5 Vinod Choudhari nowhere shows that after giving dash to the motorcycle, accused Sangit Ramteke took his jeep in reverse direction and, thereafter, crossed that jeep from the body of the deceased. The jeep was driven by accused Sangit Ramteke. Therefore, the submission of learned Additional Public Prosecutor for the State that with an intention to cause death of the deceased, the vehicle was driven and, thereafter, the accused has

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committed culpable homicide amounting to murder is not sustainable. On the other hand, the evidence of PW5 Vinod and admission given by him during the cross examination are substantiated by the spot panchanama wherein the brake marks are seen and the admissions given by the medical officer show that the injuries noted by him are possible due to the accident also and, therefore, the observation of learned Judge of the trial court that at the most the case would fall under Section 304-II of the IPC is legal and proper and as such there is no reason to interfere in the said finding. The finding recorded by learned Judge of the trial court is on the basis of the evidence adduced and after appreciating the facts and, therefore, no perversity is found in said finding.

54. As far as the submission of learned Additional Public Prosecutor for the State that the jeep was driven

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with an intention to cause death is not supported by any evidence and, therefore, the appeal filed by the State deserves to be dismissed.

55. In view of the discussion above, we proceed to pass following order:

ORDER

(1) Criminal Appeal No.563/2004 filed by accused Sangit Ramteke and Criminal Appeal No.735/2004 filed by the State are **dismissed**.

(2) The judgment and order dated 2.9.2004 passed by learned 1st Ad hoc, Additional Sessions Judge, Wardha in Sessions Trial No.189/2002 is maintained.

(3) Accused Sangit Ramteke to surrender before the Superintendent of the District Prison at Wardha to undergo the jail sentence.

Judgment

486 appeals 563 and 735.04

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(4) The bail bonds of accused Sangit Ramteke stand cancelled.

Appeals stand **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede, PS !!

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