



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

CRIMINAL APPLICATION (APL) NO.599 OF 2024

Amitosh Arun Devikar **Applicant**
Age: 43 years, Occ: Private
R/o. House No. 52/379, Lakhenagr,
Puranibasti, Raipur, Distt: Chattisgarh.

-Versus-

1. State of Maharashtra, Through Police
Station Officer, Police Station Mouda,
District: Nagpur
2. Wasudev Rajaram Burade, Through Police **Non-Applicants**
Station Mouda, District: Nagpur

Mr. Sangram Vikas Sirpurkar, counsel for Applicant.
Mr.A.R.Chutke, APP for the State.
Mr. Amit Balpande, counsel respondent No.2.

CORAM : ANIL S. KILOR AND
MRS. VRUSHALI V. JOSHI, JJ.

Date of Reserving the judgment:- 01/07/2025
Date of Pronouncing the judgment:- 16/07/2025

JUDGMENT (Per: Vrushali V. Joshi, J.)

- 1) Heard.
- 2) **Rule.** Rule made returnable forthwith. The Criminal
Application is heard finally with the consent of the learned
counsel appearing for the parties.
- 3) The present criminal application is filed by the accused
for quashing of the Charge-sheet No.104 of 2016 filed on

29/08/2016 arising out of First Information Report No.11/2016 registered under Sections 304 and 308 read with Section 34 of the Indian Penal Code with the Mouda Police Station, District Nagpur,

4) The accused is a Civil Engineer by profession. In 2016, at the time of ongoing construction of a celebration hall beside Ramtek-Mouda road, slab of the first floor of the same collapsed injuring 18 labourers and accused no.3, Dinkar Dorle (deceased), who was the Civil Contractor at the said site succumbed to injuries in the unfortunate incident. The report of the said incident came to be lodged by Wasudev Burade on behalf of the State. After registration of the crime, the investigation was carried out and after completion of the investigation, charge sheet was filed. The present applicant has been arrayed as accused no.2, while the contractor is arrayed as accused no.3. The accused no.1, Dr. Anil Borkar is the owner of the land who is a doctor by profession.

5) The accused no.1 had entered into an work agreement dated 15.04.2015 with the said contractor, wherein it was stated that the material used for centring as well as the mixture of concrete shall be brought by the Contractor, i.e., accused no.3 for the purpose of said construction. It is alleged that the present

applicant is made accused only because he is the brother-in-law of accused no.1.

6) Learned counsel for the applicant, Mr. Sirpurkar, submitted that, the said construction was being done upon the instructions of Dr. Anil Borkar. The applicant was not connected with any work of the same. He further submitted that, deceased Dinkar Dorle, the contractor at the said site was himself responsible for all kinds of material to be used in the construction.

7) It is the contention of the learned advocate that, the present slab collapsed due to the low-quality material and cement used in centring by the present applicant. The allegations do not reveal that the applicant was intending the death of contractor as he had absolutely no knowledge of the material that was being used in the construction.

8) Mr. Sirpurkar further submitted that, the present applicant is not even a resident of Mouda or Nagpur, on the contrary, he is a permanent resident of Raipur, Chattisgarh, and so was not even the supervisor of the said construction or an assigned engineer. On 12.01.2016, he had come to Nagpur on the occasion of Makar Sankranti and whilst in Nagpur, the accused no.1 asked the applicant to visit said site on 15.01.2016, i.e.,

alleged date of incident. Moreover, the applicant was neither the Engineer/Supervisor of the said site nor had executed any kind of design/layout map for the said construction.

9) Learned A.P.P, for the State strongly opposed the application and submitted that accused no.1 was constructing a building at Mouda, Nagpur and he had engaged the services of the present applicant for supervision and other work. The accused nos.1 and 3 used the building material of inferior quality, they also did not provide proper safety measures for the labourers and thus the slab of the building collapsed injuring 18 labourers and resulting into death of the contractor Dorle.

10) He further argued that accused no.1 had entered into an agreement assigning entire responsibility of the concerned work on the Engineer and Contractor, as he had no knowledge about the technicalities of the procedure of construction being a doctor by profession. In fact, he had engaged Engineer Amitosh Devikar i.e. applicant and deceased Dinkar Dorle to supervise and execute the work. As they have used sub-standard material, they are responsible for the death of the contractor and causing injuries to 18 other labourers at the construction site.

11) Heard both the learned counsel and the learned Assistant Public Prosecutor.

12) The applicant has filed this application for quashing of the First Information Report against the applicant, who is accused No.3. The allegations against the applicant are that of the construction which was going on, the applicant is an engineer and due to collapse of slab, eighteen persons got injured and one person died who is accused No.3. The accused no.3 was the contractor, accused No.1 is the owner of the site and accused no.2 is alleged to be the engineer of said site. The offence under Section 304 and 308 of the Indian Penal Code are registered against all the three persons. In this case, accused no.3 died on the spot. Accused no.1 is the owner of the said site and he has given the contract of construction to the accused no.3. The owner of the site i.e. accused no.1 is discharged by this Court on 25.02.2025. It is alleged that the construction work of hall was going on the site which was owned by the accused No.1, at the time of incident, accused no.3 and accused no.2 were present on the spot. The work of slab was done under the supervision of accused no.3 and accused No.2 was merely present. It collapsed and 18 persons got injured and accused no.3 died in the said incident. On perusal of the charge-sheet, it appears that the witnesses who have given the statements are the injured. They have given stereo-typed statements. The witnesses have stated in

their statements that as the sub-standard material was used by the accused No.2, who is the engineer has not taken proper care, though the witnesses (labourers) demanded helmet, it was not provided. It is the statement of witnesses that the accused no.3 has told them that for that height the helmet is not necessary and the helmet was not provided by the contractor and the engineer and therefore, the incident took place. Except these statements of witnesses who have mentioned the name of the applicant as engineer, nowhere it is mentioned in the charge-sheet that this applicant was appointed as an engineer on the said site and he is responsible for the said incident.

13) The agreement between the owner of the site and the accused no.3 i.e. the contractor is filed on record. It appears that the said contract, was between the accused no.3 and accused no.1. Name of this applicant is not there in the said agreement. The accused no.3 has taken the entire responsibility of any untoward incident on the site. The applicant has stated that, he is the close relative of the accused no.1, as he is staying at Raipur, and there he is doing the work of construction. The document which is filed along with charge-sheet about the qualification of the applicant shows that, he is a bachelor of technology in the stream

of civil from Open University. He is not a civil engineer. In the report from Public Works Department (PWD), it is mentioned that the Centring work of concreting of slab is required to be done under the able supervision of a technical person. As it is not mentioned anywhere that he is the person, who was appointed as an engineer to take care of said construction work and the contractor has given the undertaking and there was an agreement between the accused nos.1 and 3, the responsibility was taken by the deceased i.e. accused no.3- the contractor.

14) Section 304 of the Indian Penal Code 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”.

15) In this case, contractor died on the spot and other 18 persons got injured. Essential ingredient in case of 304-intention of causing death and knowledge of it, is required. In this case, the

charge-sheet shows that applicant was not directly connected with the said work except the statements of witnesses, who have stated that because of the use of substandard material, the incident took place. It does not show that the applicant was having intention of causing death. The total responsibility of the incident was on accused No.3, who is no more. The applicant has relied on the judgment in the case of *Yuvraj Laxmilal and anr. Vrs. State of Maharashtra reported in 2025 SCC Online SC 520* in which it is observed that :-

“12. We have noted above that the appellants have been charged for committing offence under Section 304 Part II IPC read with Section 34 IPC. Since Section 34 IPC covers common intention, the substantive charge against the appellants is under Section 304 Part II IPC which reads as under:

Punishment for culpable homicide not amounting to murder -Whoever commits culpable homicide not amounting to murder shall be punished 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.

12.1. The ingredients constituting an offence under Section 304 Part II IPC are as follows: (i) He must commit culpable homicide not amounting to murder; (ii)the act must be done with the knowledge that it is likely to cause death;(iii) but such act is done without any intention to cause death or to cause such bodily injury as is likely to cause death.

12.2. Therefore, the first important expression is ‘culpable homicide not amounting to murder’. Culpable homicide is defined in Section 299 IPC. It says that whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

12.3. All culpable homicides are murders except in the cases excepted under Section 300 IPC. Thus, except the cases

specifically exempted under Section 300 IPC, all other acts within the meaning of Section 299 IPC would amount to committing the offence of culpable homicide. However, what is important to note is that for committing the offence of culpable homicide, a positive act must be done by the doer with the intention that such act would cause death or cause such bodily injury as is likely to cause death or he having the knowledge that by such an act, death may be caused. What, therefore, is significant is that the doer of the act must have the intention of causing death or the intention of causing such bodily injury as is likely to cause death or has the knowledge that by doing such an act he is likely to cause death. Therefore, to commit the offence of culpable homicide, intention or knowledge is of crucial importance.

12.4. Coming back to Section 304 Part II IPC, we find that the said section would be attracted if anyone commits culpable homicide not amounting to murder 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. Therefore, the requirement of Section 304 Part II IPC is that the doer must have the knowledge that the act performed is likely to cause death or to cause such bodily injury as is likely to cause death but without any intention to cause death. Thus, the basic ingredient of Section 304 Part II IPC is presence of knowledge and absence of intention. The doer must have the knowledge that the act performed by him would likely cause death etc but there should not be any intention to cause death. Thus the basic ingredient of section 304 II IPC is presence of knowledge and absence of intention. The doer must have the knowledge that the act performed by him would likely cause death etc. but there should be any intention to cause death.

13. This being the legal framework, let us now deal with the charge against the appellants taking the same as correct. According to the prosecution and accepted by the Trial Court and the High Court, the two accused persons had not taken proper care and caution by providing safety shoes, safety belt etc to the two employees though they were asked to perform the job of working on the sign board as part of decorating the front side of the shop which was approximately at a height of 12 feet from the ground level. The accused persons had provided only an iron ladder to the two employees but while working they were struck by electricity as a result of which they suffered electrocution and fell down. They suffered multiple injuries which led to their death. Therefore, both the accused persons were declared to be responsible for the unnatural death of the two deceased employees.

14. Even if we take the allegation against the appellants as correct, we are afraid no prima facie case can be said to have been

made out against the appellants for committing an offence under Section 304 Part II IPC. From the record of the case, it is evident that there was no intention on the part of the two appellants to cause the death or cause such bodily injury as was likely to cause the death of the two deceased employees. It cannot also be said that the appellants had knowledge that by asking the two deceased employees to work on the sign board as part of the work of decoration of the frontage of the shop, they had the knowledge that such an act was likely to cause the death of the two deceased employees. As such, no prima facie case of culpable homicide can be said to have been made out against the appellants. If that be so, the subsequent requirement of having knowledge that the act was likely to cause the death but not having any intention to cause death would become irrelevant though we may hasten to add that nothing is discernible from the record of the case that the appellants had the knowledge that by asking the two employees to work on the sign board would likely cause their death or cause such bodily injury as is likely to cause their death”.

16) In the case in hand, the slab collapsed and one person died who himself was responsible for the quality of construction. The applicant was not having knowledge as he was not a part of said job as such, no *prima facie* case of culpable homicide can be said to be made out against the applicant.

17) The learned APP has stated that while discharging the accused no.1, this Court has observed about the responsibility of this applicant that he has executed the agreement however, after going through the charge-sheet, it appears that there is no agreement between the accused nos.1 and 2. The agreement is between accused nos.1 and 3 and no document is there in charge-sheet to show that this applicant was responsible for the said

incident and the offence under Section 304 or 308 of the Indian Penal Code will attract against this applicant. It is therefore necessary to quash and set aside the Charge-sheet and First Information Report, which is registered against this applicant. Hence, the application is allowed.

18) Charge-sheet No.104 of 2016 filed on 29/08/2016 arising out of First Information Report no.11/2016 registered under Sections 304 and 308 read with Section 34 of the Indian Penal Code registered with Mouda Police Station, District Nagpur, is hereby quashed and set aside.

19) Criminal application stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)

(ANIL S.KILOR, J)