

GIRISH SINGH

v.

STATE OF UTTARANCHAL
(Criminal Appeal No. 849 of 2007)

MAY 9, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860; Ss. 304 Part-II and 304A:

Accused pushed the deceased from hill – Deceased succumbed to injuries – Trial Court found accused guilty of committing the offence punishable u/s. 304 Part-II IPC and sentenced him to undergo imprisonment of 5 years – Affirmed by High Court – S.304 Part-II or Section 304A – Applicability of – Held: In cases where accused is neither having any intention to cause death nor having knowledge that the act done in all probability will cause death of the deceased s.304A applies – In the present case, both the ingredients, viz. intention and knowledge to cause death, were not absent, therefore, s.304A IPC has no application – Trial Court rightly held the accused liable for committing the offence punishable u/s. 304 Part-II IPC.

According to the prosecution, on the fateful day, some altercation took place between the accused-appellant and the deceased. The appellant pushed the deceased from the road on a hill and he sustained injuries. PW3, brother of the deceased and PW4, son of the deceased, who were following him took him to a Hospital where he succumbed to the injuries. PW3 lodged an F.I.R. in the Police Station. On completion of the investigation, Police filed charge-sheet against the accused. The trial Court found the accused guilty of committing the offence punishable u/s. 304 Part-II IPC and sentenced him to undergo imprisonment of five years and to pay fine. Appeal filed thereagainst by the convict was dismissed by the

A High Court. Hence the present appeal.

Dismissing the appeal, the Court

B HELD: 1.1 Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision relates to offences outside the range of Sections 299 and 300 IPC. (Para – 8) [50-C]

C 1.2 When the intent or knowledge is the direct motivating force of the act, Section 304-A IPC has to make room for the graver and more serious charge of culpable homicide. (Para – 8) [50-E]

D 1.3 In order to be encompassed by the protection under Section 304-A IPC there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A IPC has no application. (Para – 9) [50-F]

E 2. When the background facts are considered in the light of the legal principles, the inevitable conclusion is that stand of the appellant is clearly unsustainable. (Para-10) [50-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 849 of 2008

F From the Judgment & Order dated 21.3.2006 of the High Court of Uttarakhand at Nainital in Criminal Jail Appeal No. 203/2006

Radhe Shyam Sharma, (A.C.) for the Appellant.

G Sunil Kumar Singh, Anil Kumar Singh and Jatinder Kumar Bhatia for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

H 2. Challenge in this appeal is to the judgment of a learned Single Judge of the Uttaranchal High Court dismissing the ap-

peal filed by the appellant who was convicted for offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short 'IPC') and was sentenced to undergo imprisonment for five years and pay a fine of Rs.5,000/- with default stipulation.

3. Background facts in a nutshell are as follows:

Sageer Ansari (hereinafter referred to as the 'deceased') was a carpenter, who used to live in Hotel Hari Om in Uttarkashi. On 27.3.2005, he was coming from Hari Om Hotel towards Uttarkashi town. Accused/appellant Girish Singh was coming from opposite direction towards Sageer Ansari-deceased. When both of them reached near Tambakhani they had some altercations between them. Suddenly, accused-appellant Girish Singh pushed deceased Sageer Ansari from the road. Consequently, Sageer Ansari fell down from the hill and suffered injuries due to the fall from Uttarkashi – Tehri Road. The incident took place at 1.00 p.m. PW3 Israil Mian, brother of the deceased, and PW4 Mazhar Ansari, son of the deceased, who were following Sageer Ansari (deceased), witnessed the incident. The two rushed to the place of incident and took the injured to the hospital where he succumbed to the injuries suffered by him in the incident. PW3 Israil Mian, brother of the deceased, lodged first information report (Ext. A-3) with the police station. Investigation was undertaken and on completion of investigation charge sheet was filed. As accused abjured guilt, trial was held.

4. Placing reliance on the evidence of two eye witnesses i.e. Israil Mian (PW3) and Mazhar Ansari (PW4) (brother and son of the deceased respectively), the Trial Court found the accused-appellant guilty and convicted him and imposed sentence as noted above.

5. In appeal before the High Court the stand of the accused was that this is not a case where Section 304 Part II IPC is applicable. On the other hand, this is a case where even if the prosecution version is accepted in toto, it would, at the most, an offence punishable under Section 304A IPC. Another plea related to acceptance of the evidence of PWs 3 and 4 on the ground that they are related to the deceased. Both the pleas were rejected

A and appeal was dismissed. The stand taken before the High Court was reiterated by the learned counsel for the appellant.

6. In response, learned counsel for the respondent-State supported the judgments of the Trial Court as upheld by the High Court.

B 7. The plea relating to relative's evidence has no substance, when such evidence has credence it can be acted upon.

C 8. Coming to the plea of the applicability of Section 304-A, it is to be noted that the said provision relates to death caused by negligence. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision relates to offences outside the range of Sections 299 and 300 IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304-A. It 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 in Section 300 IPC. 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 IPC has to make room for the graver and more serious charge of culpable homicide.

F 9. In order to be encompassed by the protection under Section 304-A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application.

G 10. When the background facts are considered in the light of the legal principles set out above, the inevitable conclusion is that stand of the appellant is clearly unsustainable.

11. The appeal is without merit, deserves dismissal, which we direct.

H S.K.S

Appeal dismissed