

**Criminal Revision****PRESENT: The Hon'ble Justice Ashim Kumar Roy****Judgment On: 06-01-2010.*****C.R.R. No. 3581 of 2009******Goutam Singh******versus******The State of West Bengal*****Point:**

**FRAMING OF CHARGE:** Rash and negligent driving causing death of a person- Framing of charge under Section 304 of the Indian Penal Code whether justified - The Indian Penal Code, 1860-Ss. 304 & 304A.

**Fact:** Car, driven by the petitioner, came in high speed and in a very rash and negligent way hit a motor cycle from its back thereby causing death of its rider. A case registered against the petitioner under Section 279/427/304 of the Indian Penal Code and after completion of investigation, Police submitted charge-sheet for the self-same offences. Subsequently, charge was framed against the petitioner by the Ld. District and Sessions Judge under Section 279/427/304/304A of the Indian Penal Code. Challenging such order of framing charge under Section 279/427/304/304A, the petitioner filed the instant Revisional Application.

**Held:**

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 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.

Paragraph – 5

Cases considered:

- A. AIR1976SC1012 (State of Gujrat Vs. Haider Ali Kalubai)
- B. AIR2007SC1190 (Naresh Giri Vs. State of M. P.)
- C. 209(1)SCC(Cri)873 (Prabhakaran Vs. State of Kerala)
- D. 2008(3)SCC(Cri)456 (Manish Jalan Vs. State of Karnataka)
- E. 2001CR.L.J5 (State Vs. M.D. Yusuf)
- F. 1996SCC(Cri)1124 (Keshub Minder Vs. State of M.P.)
- G. 2007(10)SCC792(State of Rajasthan Vs. Chitramal)

For Petitioner : Mr. Prabir Mitra  
Mr. Achin Jana

For State : Mr. Sobhendu Sekhar Roy

The Court: The subject matter of challenge in the instant criminal revision is an order of framing charge under Sections 279/427/304/304A of the Indian Penal Code.

2. The background facts of this case are as follows;

“On 13.11.2008 at about 11.35, one Ajit Patra while was moving in a Motor Cycle towards Kona Crossing from Maity Para through NH – 6, near Chamrile Oasis Hotel one Ambassador Car in high speed dashed the Motor Cycle from its back, as a result the said Ajit Patra suffered serious injuries and died at the spot.

Following the aforesaid incident a case under Sections 279/427/304 of the Indian Penal Code was registered at Liluah Police Station and after completion of investigation police also submitted charge-sheet for the self-same offences. Thereafter, the case was committed to the Court of the Learned District and Sessions Judge, Howrah, where the petitioner was placed on trial and a charge was framed against him under Sections 279/427/304/304A of the Indian Penal Code as aforesaid.”

3. Heard the Learned Counsel appearing on behalf of the petitioner as well as the Learned Counsel appearing on behalf of the State. Perused the Case Diary containing the charge-sheet materials on the basis of which the impugned charges have been framed.

4. As it appears from the First Information Report lodged by a person who was allegedly present at the spot at the time of the occurrence, while the deceased Ajit Patra was moving in a Motor Cycle through the NH – 6 and going towards Kona Crossing from the side of Maity Para was hit by a Ambassador Car from its back which was driven in high speed in a rash and negligent way and thereby caused the death of the said Ajit Patra. It further appears that during investigation police examined two other persons, viz., one Narendra Roy and one Siddhartha Ghosh both of them were present at the spot at the time of the alleged occurrence. According to the said witnesses the Ambassador Car in question came in a high speed and in a very rash and negligent way and hit the Motor Cycle in question from its back thereby causing death of the rider Ajit Patra.

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.

6. In this connection it would be relevant to take into account the following decisions of the Hon'ble Apex Court, viz., State of Gujrat Vs. Hyder Ali Kalubai, reported in AIR 1976 SC 1012, Naresh Giri Vs. State of M.P., reported in AIR 2007 SC (Supple) 1190, Prabhakaran Vs. State of Kerala, reported in (2009) 1 SCC (Cri) 873, Manish Jalan Vs. State of Karnataka, reported in (2008) 3 SCC (Cri) 456, State Vs. M.D. Yusuf, reported in 2001 Criminal Law Journal 5,

Keshub Minder Vs. State of M.P., reported in 1996 SCC (Cri) 1124, State of Rajasthan Vs. Chitramal, reported in (2007) 10 SCC 792.

7. In the first referred case the accused who had no license, drove the truck, parked in an open field near a pathway, with headlights on in full speed. He was unable to control the vehicle while taking a turn, to get into the Kutcha Road and in that process, hit a cot, at the turning point, where the deceased was resting outside a hotel adjoining the open field. The impact threw the deceased out of the cot, resulting in injuries which ultimately led to his death. In the said case the Apex Court held that the facts did not disclose any willful deliberate act on the part of the accused, in order to cause death of the deceased by driving the truck in the way he did. But the facts and circumstances fit in more reasonably with the theory of loss of control by the accused of the vehicle in high speed at the time of taking turn for the Kutcha Road, the case therefore fell under Section 304A and not under Section 304 Part II of the Indian Penal Code.

In the second case a bus in a high speed hit a train at unmanned railway crossing and thereby caused death of two passengers in the bus. The Supreme Court altered the charge to Section 304A of the Indian Penal Code from Section 304 of the Indian Penal Code.

Similarly, in the third case, a small boy aged about 10 years was ran over in the middle of a road by a bus driven by the accused. It was the evidence that the passenger of the bus were alarmed at the speed in which the same was being driven and also cautioned to driver to stop, even crying, as they saw school children were crossing the road, in spite of that the driver had not reduced the speed and hit the boy. In the said case Supreme Court converted the conviction of the accused under Section 304A I.P.C. from Section 304 Part II, I.P.C.

In view of above, the charge against the petitioner under Section 304 of the Indian Penal Code is hereby quashed and the Trial Court is directed to proceed with the trial of the petitioner for offences punishable under Section 279 /427/304A of the Indian Penal Code.

It is further directed that all endeavours shall be made by the Trial Court to conclude the trial as expeditiously as possible preferably within six months from the date of communication of this order and shall proceed strictly in terms of Section 309 of the Code of Criminal Procedure.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

*( Ashim Kumar Roy, J. )*