

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**CRIMINAL REVISION No. 5252 of 2023**

**BETWEEN:-**

**KAMLESH SINGH S/O PRAHLAD SINGH, AGED ABOUT  
34 YEARS, OCCUPATION: DRIVER BIJA DOGI, DIST.  
DAMOH (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI AJAY RAJ GUPTA, ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THROUGH POLICE STATION LASUDIYA  
INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI SACHIN JAISWAL, GA FOR STATE)**

**HEARD ON : 28.02.2024**

**DELIVERED ON: 04.03.2024**

*This revision petition was heard the court pronounce the following:*

**ORDER**

The petitioner has filed the present revision petition under Section 397 R/w Section 401 of Cr.P.C. being aggrieved by the order dated 24.08.2023 passed by learned 2nd ASJ, Indore in ST No.151/2023 whereby the learned trial Court framed the charges against the petitioner under section 304, 279, 337 of IPC.

2. As per the prosecution story, the allegations against the petitioner is that on 09.06.2022 at about 01:00PM, the petitioner was driving his loading vehicle bearing Registration No.MP09UC5900 on wrong side recklessly and negligently at AB Road and dashed the bike of the complainant. Due to the said

accident, complainant Shashan Sharma got injured while Sakshi Sharma (pillion rider) has expired. Hence, the offence was registered against the petitioner.

3. To controvert the impugned order, learned counsel for the petitioner submits that however, the petitioner was admittedly going through the wrong side, but he had no intention to cause death of the deceased. Since the incident had happened all of a sudden, the petitioner could not be attributed for intention of causing any bodily injury to the deceased. Hence, his limited prayer is that the offence under Section 304 of IPC shall not be made out against the petitioner and the learned trial Court has committed grave error of law in framing the charges against the petitioner under Section 304 of IPC in place of Section 304-A of IPC. Hence, prays that the impugned order may be set aside qua the offence under Section 304 of IPC and charges under Section 304-A may kindly be framed by allowing the present petition.

4. On the other hand, counsel for the State has opposed the prayer, however, he has not disputed the averments made by counsel for the petitioner. It is submitted that the learned trial Court has rightly framed the charges against the petitioner because the petitioner was driving the vehicle on wrong side recklessly and negligently that too on very high speed. It is further submitted that the petitioner has committed the offence and there was clear knowledge to anyone that if the vehicle met with an accident, some one can be expired.

5. I have heard the learned counsel for the parties and perused the record.

6. Prior to decide the question whether the charges under Section 304 of IPC has been framed by the learned trial Court correctly or not, the provisions of Section 304 of IPC is required to be considered first, which reads as under:-

**"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.

**304-A. 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."

7. In order to establish the offence of culpable homicide not amounting to murder punishable under section 304 of IPC, the prosecution has to prove the knowledge or intention to cause death or such bodily injury as is likely to cause death.

8. On this Aspect, the pronouncement of Hon'ble apex Court rendered in **Jayaraj vs. State of Tamilnadu [AIR 1976 SC 1519]** are worth to refer here wherein the Hon'ble Apex Court relying its another Full Bench decision adumbrated as under:-

"33. As was pointed out by this Court in **Anda vs. State of Rajasthan, AIR 1966 SC 148**, "intent" and "knowledge" in the ingredients of section 299 postulate the existence of positive mental attitude and this mental condition is the special mensrea necessary for the

offence. the guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death....."

9. Further, as the contention of counsel for the petitioner is only that the offence would be made out only under Section 304-A in place of 304 of IPC, this Court also considered the similar view in **Hemraj Jan v. State of Madhya Pradesh [2009 (5) MPHT 49]**, wherein the death of the deceased however was due to electrocution, but the High Court has considered the act in para no.16 as under:

"16. A rash or negligence act does not amount to culpable homicide under Section 299 of the IPC unless it is proved that the offender willfully and with the knowledge did the act which resulted in the death of the victim. In the fact situation of the present case, in my opinion, it cannot be held that either of the accused had knowledge that by this act he was likely to cause the death of deceased. Since the essential ingredient "knowledge" on the part of the accused persons is not established, they cannot be punished for the offence of culpable homicide not amounting to murder."

10. In the case at hand, certainly, the petitioner was driving the vehicle on the wrong side recklessly and negligently and met with an accident due to which the deceased has unfortunately lost her life, but rash or negligence act does not amount to culpable homicide under Section 299 of the IPC unless it is proved that the offender willfully and with the knowledge coupled with mensrea did the act which resulted in the death of the deceased. In the fact situation of the present case, in my opinion, it cannot be held that either of the accused had

knowledge that by this act he was likely to cause the death of deceased. Since the essential ingredient "knowledge" on the part of the petitioner is not established, he cannot be charged for the offence of culpable homicide not amounting to murder.

11. Hence, in view of the aforesaid elaborate discussions, provisions of Section 304 and 304-A of IPC and the law settled by Hon'ble Apex Court in the case of **Jayaraj (supra)** as well as by this Court in the case of **Hemraj Jain (supra)**, the petitioner is liable to be charged under Section 304-A of IPC in place of 304 of IPC. The impugned order of learned trial Court regarding framing of charge against the petitioner under Section 304 of IPC is suffering from impropriety and illegality, hence, the impugned judgment is set aside *qua* framing of charge against the petitioner under Section 304 of IPC. Rest of the charges stands affirmed.

12. Consequently, the CRR is partly allowed and disposed off.

13. The learned trial Court shall proceed with the trial for the offence punishable under Section 304-A, 279, 337 of IPC in consonance with the provisions of Section 228 of Cr.P.C.

14. A copy of this order be sent to the learned trial Court for information.

Certified copy, as per rules.

(PREM NARAYAN SINGH)  
JUDGE