Cr.A. No.1716 of 1997

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK KUMAR SINGH
&
HON'BLE SHRI JUSTICE AJAY KUMAR NIRANKARI

ON THE 9TH DAY OF OCTOBER, 2025

CRIMINAL APPEAL No. 1716 of 1997

LAKHAN MAHARAJ AND ANOTHER

Versus

THE STATE OF MADHYA PRADESH

Appearance *:*

Shri Siddharth Sharma and Shri Shubham Manchani - Advocates for the appellants.

Shri Yash Soni – Public Prosecutor for the respondent/State.

Ms. Zuberia Khan – Advocate for the objector.

Reserved on : 19/09/2025
Pronounced on : 09/10/2025

J U D G M E N T

Per : ***Justice Vivek Kumar Singh***

Assailing the judgment of conviction dated 05.08.1997 passed by Fifth Additional Sessions Judge, Bhopal, District Bhopal (M.P.) in S.T. No.135 of 1996 whereby each of the accused/appellants have been convicted for offence punishable under section 302/34 of IPC and

sentenced to undergo Imprisonment for life and fine of Rs.1,000/-, in default of payment of fine amount to suffer additional rigorous imprisonment of 06 months.

2. Prosecution story in short is that on 02.02.1996 at about 2:00 P.M. deceased Sarvar Ali Khan was riding his Scooter near Barkhedi Tola, where a truck bearing Registration No.MOU 1446 driven by appellant no.1/Lakhan Maharaj, accompanied by appellant no.2/Suresh Sharma and other co-accused Chanderlal (not a party in this appeal) rammed him from the opposite direction. The said collision threw Sarvar Ali Khan from his scooter and he succumbed to the injuries thus sustained.

3. Learned counsel for the appellants submits that they are innocent and have been falsely implicated in the present case. Learned counsel for the appellants further submits that the eye-witnesses are unreliable and they are "made up" witnesses and learned trial court has relied upon the testimonies of eye-witnesses namely Abdul Majid (PW-1), Mohammad Imran (PW-2) and Shahid Khan (PW-14) while passing the judgment. Their testimonies are full of contradictions and omissions. Thus, it is submitted that the collision of scooter and truck was neither with any premeditation nor has any motive to commit murder of the deceased. It is further submitted that once the accused

persons stood acquitted of Section 120B of IPC, there was no longer any *mens rea* or motive remaining to prove as noted by the Court below that there was indeed a criminal conspiracy. He further submits that the driver/appellant no.1-Lakhan Maharaj tried his best to avert the collision of truck with the scooter. As a matter of fact, the presence of 30 ft. long skid mark from the truck's tyre clearly suggests that driver tried his best to avert the collision. Furthermore, driver's act of stopping the truck and fleeing on bare foot, leaving behind all the important documents carrying his name inside the truck itself shows that the collision was accidental and not premeditated one and in panic, the driver left behind all the important documents containing his name and address. He further submits that prosecution has failed to prove or substantiate the common intention and hence in absence of any proof of the same, Section 34 cannot be attracted.

4. In support of his arguments, learned counsel for the appellants relied upon catena of judgments of Hon'ble Supreme Court rendered in the cases of **Bhagwan Jagannath Markad & Ors. Vs. State of Maharashtra (2016) 10 SCC 537; State of Punjab Vs. Jagir Singh (1974) 3 SCC 277; Prabhakaran Vs. State of Kerala (2007) 14 SCC 269; State of Punjab Vs. Balwinder Singh & Ors. (2012) 2 SCC 182; Gulabsing Sureshsing Sisodiya Vs. State of (2018) SCC Online**

Bom 5172 and **Durga Burman Roy Vs. State of Sikkim (2014) 13 SCC 35**.

5. Learned counsel for the appellants submits that if the prosecution evidence is believed, then at the most, the case would fall under Section 304A of the IPC and not under Section 302/34 IPC. He also pointed out towards the ingredients of Section 304A of the IPC, which is reproduced below for ready reference :-

> ***"304A. Causing death by negligence –***
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> *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."*

6. Learned counsel for the appellants further submits that appellant no.1 - Lakhan Maharaj has served actual sentence of 01 year, 07 months and 13 days and appellant no.2 - Suresh Sharma has served actual sentence of 03 months and 05 days. Therefore, prayer is made to allow the instant appeal and acquit the appellants of the charges, for which, they have been convicted and sentenced, as stated above.

7. On the other hand, Shri Yash Soni, Deputy Advocate General for the respondent/State supports the impugned judgment and prays for dismissal of this appeal. He contends that there was a previous enmity

prevailing between both the parties with respect to a land. A case is also pending before the High Court under Section 307 of the IPC against appellant no.1 – Lakhan Maharaj with respect to murderous attack on Sarvar Ali. He further contends that by upholding the reliability of testimonies of consistent eye-witnesses and aligning them with the forensic evidence, the Court reinforced the requirement of securing convictions in serious offence. It is further contended that a single blow to a vital part of the body with a deadly weapon, if it causes death in the ordinary course of nature, can amount to murder.

8. In support of his arguments, he relied upon the judgments of Hon'ble Supreme Court rendered in the cases of **Kunwar Pal Vs. State of Uttarakhand** reported in **(2014) 16 SCC 560** and **State of Rajasthan Vs. Kanhiya Lal** reported in **(2019) 5 SCC 639**.

9. Parties confined their arguments to the extent indicated above.

10. We have heard the parties at length and perused the record.

11. Learned trial Court while passing the impugned judgment of conviction and sentence, heavily relied upon the testimonies of alleged eye-witnesses Abdul Mazid (P.W.1) and Mohammad Imran (P.W.2). In paragraph-2 of his deposition, Abdul Mazid (P.W.1) has stated that the incident occurred at around 11:00 AM to 12:00 PM and he stood at the spot for 02-03 minutes, and thereafter reached the Police Station that

took him about 10-15 minutes and further deposed that he reached the hospital around 12:00-12:30 PM. However, Bahadur Singh, Head Constable (P.W.4) has deposed that PW-1 reached the police station at 12:20 PM. P.W.1 further deposed that his return from the hospital to the place of incident took about 01 to 1.5 hours including 15 minutes halt for *Namaz*. The timeline stated by P.W.1 is highly improbable reflecting clear discrepancy in travel timings which in entirety is highly suspicious. Even, P.W.1 himself admitted in his testimony that he had pending monetary disputes with appellant No.1 Lakhan Maharaj arising out of Panchayat related work. This clearly establishes a ground of personal enmity and animosity between P.W.1 and the appellant No.1 Lakhan Maharaj, which makes P.W.1 a highly interested witness. Further, in the deposition of Mohammad Imran (P.W.2), he has admitted that he signed the documents presented by the police without even going through them. Such an admission of P.W.2 shows that he was unaware of the contents of those documents and mechanically endorsed whatever was placed before him. This demonstrates that P.W.2 is not an independent witness but an echo of P.W.1 blindly supporting him. In such circumstances, his testimony cannot be relied upon to sustain conviction. However, while convicting the appellant No.1 Lakhan Maharaj, though the learned trial Court has relied upon

the testimony of another eye-witness Shahid Khan (P.W.14) regarding the presence of appellant No.2 at the place of incident but has failed to pay attention towards his inconsistent testimony. In such circumstances, it is needless to emphasize that nobody can be held guilty for committing offence under Section 302 of IPC unless the allegations are proved to the hilt. Suspicion, surmises and conjunctures in no case can take the place of proof.

12. In the present facts and circumstances of the case, the appellants have already been acquitted by the trial Court under Section 120B of IPC holding that there was no longer any *mens rea* or motive remaining in the matter. Though, the prosecution has made out a case of well planned murder under Section 302 of the IPC but without proving the crucial circumstances of conspiracy, substantial evidence being disproved and not challenged, it cannot be the case of Section 302 of the IPC. After a scrupulous and meticulous examination, even by a widest stretch of imagination, this case points only towards an offence of causing death by negligence under Section 304-A of the IPC which is supported by the arguments advanced by learned counsel for the appellants regarding the presence of 30 ft. long skid mark from the truck's tyres suggesting that the driver of the truck tried his best to avert the collision. Even, the testimony of P.W.19 Dr. Harsh Sharma

supports accident dynamics and not intentional ramming. Thus, the overall conduct of the appellants and the evidence brought on record shows the true picture of the instant case, reflecting negligent driving with last moment braking and hence ingredients of Section 302 of IPC, intention or knowledge, preparation and motive of causing death of the deceased are absent. Hence, at most, only Section 304A IPC can be attracted.

13. In this context, it is profitable to refer paragraphs-13 and 35 of the decision of Supreme Court rendered in the case of **Richhpal Singh Meena Vs. Ghasi @ Ghisa & Ors.** reported in **(2014) 8 SCC 918** wherein the Apex Court has held as under :-

> "**13.** There are two kinds of culpable homicide: (i) Culpable homicide amounting to murder (Sections 300/302 IPC), and (ii) Culpable homicide not amounting to murder (Section 304 IPC). A rash or negligent act that results in the death of a person may not amount to culpable homicide in view of Section 304-A IPC. In other words, such a rash or negligent act would be "not-culpable homicide". But, there could be a rash or negligent act that results in the death of a person and yet amount to a culpable homicide falling within the scope and ambit of Section 299 IPC. This distinction was clearly brought out (following Naresh Giri v. State of M.P. [(2008) 1 SCC 791 : (2008) 1 SCC (Cri) 324] which contains a very useful discussion) in State of Punjab v. Balwinder Singh [(2012) 2 SCC 182

: (2012) 1 SCC (Cri) 706] in the following words: (SCC pp. 185-86, para 10)

"10. Section 304-A was inserted in the Penal Code by Penal Code (Amendment) Act 27 of 1870 to cover those cases wherein a person causes the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. The case should not be covered by Sections 299 and 300 only then it will come under this section. The section provides punishment of either description for a term which may extend to two years or fine or both in case of homicide by rash or negligent act. To bring a case of homicide under Section 304-A IPC, the following conditions must exist, namely,

(1) there must be death of the person in question;

(2) the accused must have caused such death; and

(3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide."

The distinction brought out in both the judgments has been accepted and followed, amongst others, in Alister Anthony Pareira v. State of Maharashtra [(2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] and State v. Sanjeev Nanda [(2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2013) 3 SCC (Cri) 899] . In these two cases, this Court found that a case of culpable homicide not amounting to murder (within Section 299 read with Section 304 IPC) was made out and a conviction handed down accordingly.

35. Having considered all the decisions cited before us (and perhaps there are many more on the subject but not cited), in our opinion, a five-step inquiry is

> necessary: (i) Is there a homicide? (ii) If yes, is it a culpable homicide or a "not-culpable homicide"? (iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (Section 300 IPC) or is it a culpable homicide not amounting to murder (Section 304 IPC)? (iv) If it is a "not-culpable homicide" then a case under Section 304-A IPC is made out. (v) If it is not possible to identify the person who has committed the homicide, the provisions of Section 72 IPC may be invoked. Since this five-pronged exercise has apparently been missed out in the first category of decisions, the learned amicus was of the opinion that those decisions require reconsideration."

14. Time and again, this issue has been manifestly and poignantly dealt with by the Supreme Court in its various pronouncements. In one such recent decision rendered in the case of **Anbazhagan v. State, 2023 SCC OnLine SC 857,** the Apex Court has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act, which is as under :-

> "66. Few important principles of law discernible from the aforesaid discussion may be summed up thus :—
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> (1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate:'A' is bound hand and foot. 'B'

comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of

the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii)

when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC 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.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. 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.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to

bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

> (11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.
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> (12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

15. This Court also derives strength from yet another decision of the Apex Court rendered in the case of **Prabhakaran Vs. State of Kerala (2007) 14 SCC 269** wherein the Apex Court in para-6 of its decision has discussed the essential ingredients of Section 304A and held as under :-

> "**6.** A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done

precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not. Lord Atkin in Andrews v. Director of Public Prosecutions [1937 AC 576 : (1937) 2 All ER 552] AC at p. 583 observed as under : (All ER p. 556 C-E)

"Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'reckless' most nearly covers the case. It is difficult to visualise a case of death caused by 'reckless' driving, in the connotation of that term in ordinary speech, which would not justify a conviction for manslaughter, but it is probably not all-embracing, for 'reckless' suggests an indifference to risk, whereas the accused may have appreciated the risk, and intended to avoid it, and yet shown in the means adopted to avoid the risk such a high degree of negligence as would justify a conviction."

7. "7. 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 is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of

a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, ‘rashness’ consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

9. The distinction has been very aptly pointed out by Holloway, J. in these words:

‘Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient

> precautions to prevent their happening. The imputability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection."

16. In our considered opinion, the argument of learned counsel for the appellants has substantial force that necessary ingredients for attracting Section 302 of IPC are absent in the present case. Thus, in the absence of establishing any intention of causing death on the part of appellants, the appellants cannot be held guilty for committing murder of the deceased.

17. Testing the factual scenario of this case on the anvil of the aforesaid pronouncements of the Apex Court, it is crystal clear that the appropriate conviction would be under Section 304A IPC and not under Section 302 IPC.

18. Accordingly, the appeal is **allowed** and the conviction of the appellants is altered from Section 302/34 IPC to Section 304A of IPC and as a result of reduced charge, appellants are sentenced to the period already undergone by them subject to depositing their fine sentence of

Rs.1000/- each. Consequently, the appellants be released forthwith, if not required in any other offence.

19. Learned trial Court is directed to ensure the aforesaid compliance.

20. The order of trial Court pertaining to disposal of property is affirmed.

19. Record of the trial court be sent back.

(VIVEK KUMAR SINGH)	**(AJAY KUMAR NIRANKARI)**
JUDGE	**JUDGE**

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