

## STATE OF GUJARAT

v.

HAIDARALI KALUBHAI

February 3, 1976

[P. K. GOSWAMI AND P. N. SHINGHAL, JJ.]

*Indian Penal Code—Section 304A—Ingredients of—Loss of control over the speeding truck causing the fatal injury falls under s. 304A.*

On August 23, 1969, the respondent accused came in a tractor and stopped it on the highway. Seeing the parked truck GTF 904 which he used to drive previously, the accused used the key of his tractor to start the same and drove it with the head lights on in full speed. The conductor of the truck owner was also in the tractor at that time. The tractor while being driven by the field and while he was trying to turn towards the kutchra road, hit against the cot in which the village Sarpanch who was resting on it and talking with three policemen. The policemen jumped from the cot and sustained injuries, while the Sarpanch who was thrown away by the impact of the tractor to a distance of about ten feet from the cot, had grievous injuries to which he succumbed later. Since there was enmity between the deceased and the accused over the Panchayat elections, the prosecution put up a case of deliberate and wilful driving of the vehicle towards the cot with the intention of causing death of the deceased Sarpanch. The Sessions Judge convicted the accused (i) under s. 304 Part II, I.P.C. for causing the death of the Sarpanch and (ii) under s. 326 and 323, I.P.C. for causing injuries to the two other persons and sentenced him for rigorous imprisonment for seven years and two years respectively for the said offences. On appeal to the High Court, the conviction was altered to one under s. 304A only and the respondent was sentenced to rigorous imprisonment for 18 months and to a fine of Rs. 500/-.

Dismissing the State's appeal by special leave, the Court,

HELD : (1) Section 304A 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 s. 299, I.P.C. or murder under s. 300 I.P.C. Each case will depend on the particular facts established against the accused. [305A-B]

(2) Section 304A, by its own definition totally excludes the ingredients of s. 299 or s. 300, I.P.C. Doing an act with the intent to kill a person or knowledge that doing of an act is likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge is the direct motivating force of the act complained of, s. 304A has to make room for the graver and more serious charge of culpable homicide. [306 GH, 307A]

(3) In the instant case, the tangential track of the speeding truck coming in contact with the corner of the steel cot throwing it over the wooden cot and thereby throwing the deceased out of it resulting in fatal injuries, would not reveal the accused's intention or any deliberate act with the requisite knowledge for an offence of culpable homicide. The facts and circumstances disclosed in this case fit in more reasonably with the theory of loss of control by the accused of the vehicle in high speed trying to take a turn for the kutchra road. The case falls under s. 304A, I.P.C. and not under s. 304 Part II, I.P.C. [307-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 188 of 1971.

Appeal by special leave from the judgment and order dated the 29-9-1970 of the Gujarat High Court in Criminal Appeal No. 410 of 1970.

- A *D. Mookherjee, S. K. Dholakia and M. N. Shroff*, for the appellant.  
*K. J. Shethna and Vimal Dave and Miss Kailash Mehta*, for the respondent.

The Judgment of the Court was delivered by

- B GOSWAMI, J.—The accused Haidarali Kalubhai was convicted by the Sessions Judge, Mehsana, under section 304 Part II, Indian Penal Code, and was sentenced to rigorous imprisonment for seven years for causing death of Mahomadali Kasamali. He was also convicted under sections 326 and 323 I.P.C. and sentenced to rigorous imprisonment for two years and to three months respectively in connection with injuries to two other persons. On appeal to the High Court conviction was altered to one under section 304 A.I.P.C. only and the accused was sentenced to rigorous imprisonment for eighteen months and to a fine of Rs. 500/-, in default rigorous imprisonment for six months.

- C Briefly the facts are as follows :—

- D It was usual for the deceased Mahomadali Kasamali, who was the sarpanch of village Nandasan, to spend some hours of the night from 8.00 P.M. to 11.P.M. near the Hotel Shanker Vijay which is situated by the side of the highway from Mehsana to Ahmedabad. There is a big open space in front of the hotel towards the north and a kutch road branches off from the highway towards Dangarwa. This kutch road is almost in the centre of the open space in front of the hotel measuring about 80 feet. It is said that the portion immediately in front of the hotel is about two feet higher in elevation from the kutch road. On August 23, 1969, the accused came in a tractor and stopped the same on the highway. He saw truck No. G.T.F. 904 which was parked opposite to the aforesaid hotel of Vasudev (P.W. 7). The owner of the truck had gone to the village leaving his conductor Usman Imamali (P.W. 11) in the truck. It is said that the accused used to drive this truck earlier with permission of the truck-owner. This time he used the key of his tractor to start the truck and he drove the same by the open field in front of the hotel. He drove the truck with the head lights on in full speed straight on the steel cot on which the deceased was resting with the result that the truck dashed against the cot and the deceased was thrown away to a distance of about ten feet from the cot. Head Constable Revajit (PW 3) was sitting on the same cot with the deceased and he was also thrown away. There was another wooden cot nearby where Constable Dalpat Singh (PW 4) and Vavdinmiya (PW 5) were sitting. The Head Constable with the other Constable came to meet the Sarpanch in connection with the investigation of a certain case. Since there was enmity between the accused and the deceased on account of Panchayat elections the prosecution case is that the accused wilfully and deliberately drove the vehicle towards the cot with the intention of causing death to the deceased Sarpanch. The accused was originally charged under section 302 IPC and under section 326 and 323 IPC with the result mentioned above. Hence this appeal by the State by special leave against the judgment of the High Court.

- H The question that arises for consideration is whether the facts that are established against the accused fulfil the ingredients of section 304

Part II as submitted by Mr. Debabrata Mukherjee on behalf of the State. According to the learned counsel this is a clear case under section 304 Part II and conviction under section 304A is unsustainable. A

Section 304A 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 IPC or murder under section 300 IPC. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Each case will, therefore, depend upon the particular facts established against the accused. B

The prosecution in this case wanted to establish a motive for committing the offence against the Sarpanch. It was sought to be established that there was enmity between the Sarpanch and the accused and his relations on account of Panchayat elections. Some evidence was led in order to prove that the accused and his relations were gunning against the Sarpanch for some time after the latter's election as Sarpanch. Even an anonymous letter was received by the Sarpanch threatening his life which was handed over to the police by the Sarpanch. Both the Sessions Judge as well as the High Court did not accept the evidence appertaining to motive. Mr. Mukherjee, therefore, rightly and very fairly did not address us with regard to that part of the case. Even so, the learned counsel submits that the act *per se* and the manner in which the vehicle was driven clearly brought the case under section 304 Part II IPC. C  
D

The following facts are established. The accused drove the truck at great speed with lights on. He had the conductor with him in the truck. Some time before driving the truck the accused had seen the Constables talking with the Sarpanch at the spot in question. There is no evidence that the accused had a licence to drive the truck. It, however, appears from Ext. 70, which is a complaint in criminal case No. 160 of 1969 dated January 17, 1969 that the accused "had no licence..... while driving his truck No. GTF 704." While the two Constables jumped from the cot and escaped the deceased could not do so in spite of being alerted by the Head Constable as he was in a lying posture on the cot. It appears from the map of the scene Ext. 9 that the truck while being driven by the field was trying to turn towards the kutchra road at a point near the cot shown in the map. This would go to show that the accused was unable to control the vehicle in high speed while taking a turn to get into the kutchra road from the open field and in this process hit the cot throwing the deceased out of the cot by the impact resulting in injuries which ultimately led to his death. Even the Constables, who jumped from the cot, received injuries. There was no direct impact of the persons with the vehicle in speed. E  
F  
G

The accused in his statement under section 342, Criminal Procedure Code, stated as follows :— H

"I took the truck in reverse first and as there were other trucks lying round about, I took out my truck from the available way.

- A** The acclator (sic) stuck down and hence the truck went in full speed and did not remain in control. One truck was coming from opposite side with full light. While driving with (sic) this way, I heard some noise, and the conductor Usman told me that the truck had struck with something then I heard some shouts and realised that some persons were injured but I did not stop the truck through fear of assault . . . . . truck through fear of assault . . . . . I presented myself at the Police Station”.

**C** Now this version is supported by Usman (PW 11) who, however, has been declared hostile by the prosecution. He was cross-examined by the prosecution in order to show that he made a wrong statement in the examination-in-chief when he stated that the accused drove the truck with the key of the truck whereas he had stated before the police that the accused came on his tractor and started the truck with his key. He was also cross-examined about a truck coming from the opposite side with full light that he had not stated to the police to that effect.

**D** We do not think that the omission to mention before the police about another truck coming from the opposite direction can be a contradiction within the meaning of section 162, Criminal Procedure Code. We also do not give much importance as to whether the accused drove the truck with his key or with the key of the tractor. That has not much relevance in view of the fact that the accused admitted to have driven the truck. Besides, it is admitted by the prosecution witnesses (PWs' 2 and 6) that the conductor (PW 11) was in the truck when the accused drove the same. PW11 is, therefore, a natural witness and we do not find any reason to disbelieve him when he stated that a truck was coming from the opposite direction with full lights on. Besides, the owner of the truck having not found the truck in the place where he had parked had already telephoned to the Police Station about someone taking away the truck. PW11, who is an employee of the truck-owner, was, therefore, not even obliged to speak in favour of the accused. The facts disclosed in the prosecution evidence, therefore, do not make out a case of any wilful or deliberate act on the part of the accused in order to cause the death of the Sarpanch by driving the truck in the way he did. Besides, the presence of the Head Constable and another Constable with the deceased whom the accused had himself seen prior to his driving the truck would run counter to a theory of wilful and deliberate act on the part of the accused to cause the death not only of the Sarpanch but necessarily also of the Constables.

**H** Section 304A by its own definition totally excludes the ingredients of section 299 or section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, section 304 A has to make room for the graver

and more serious charge of culpable homicide. Does this happen in this case ?

A

The tangential track of the speeding truck coming in contact with the corner of the steel cot throwing it over the wooden cot and thereby throwing the deceased out of it resulting in fatal injuries would not reveal the accused intention or any deliberate act with the requisite knowledge for an offence of culpable homicide. The facts and circumstances disclosed in this case fit in more reasonably with the theory of loss of control by the accused of the vehicle in high speed trying to take a turn for the kutchra road.

B

There is, therefore, no error committed by the High Court in holding that the falls under section 304A IPC and not under 304 Part II IPC. The appeal is accordingly dismissed.

C.

S.R.

*Appeal dismissed.*