

MHST110007552015



The state of Maharashtra
Vs.
Rohitkumar Sharma. Accused.

ORDER BELOW EXH. 37 IN SUMMARY CRIMINAL
CASE NO.118/2016
(Date: 16th May 2026)

The present application is filed by Ld. APP, under Section 216 of the Code of Criminal Procedure (Cr.P.C.), 1973 to alter or add charge in the present Case.

02. It is contention of Ld. APP that Investigating Officer has filed final report under Section 173 of Cr.P.C. in this Court and as per report, charge is framed against the accused for the offence punishable under Section 279, 304(A), 338, 337 of Indian Penal Code (for short IPC) and 184, 134(a),(b)/187 and 185 of Motor Vehicle Act(for short M.V. Act). But, in the present case, the section 304 part II of IPC is attracted and for the same, present application is moving before this Court.

03. It is further contention of Ld. APP that Section 304 part II of IPC provides that punishment for culpable homicide not amounting to murder. The rash or negligent driving on public road with the knowledge of the dangerous character and the likely effect of act and resulting in death, may fall in the category of culpable homicide not amount to murder. The act done by accused with the knowledge that it is likely to cause death, but without any intention to cause death, the Section 304 part II is attracted to present case.

04. It is further contention of Ld. APP that from the complaint, statement of witnesses, documents along with charge sheet, it appears

that accused has driven his vehicle in rash and negligent manner, endangering human life of personal safety of others under the influence of liquor. Due to rash and negligent driving of accused, one person has died and one is gravely injured. Therefore, prima-facie it appears that accused has committed culpable homicide not amounting to murder and knowledge must be imputed to him that his act was within his knowledge to be likely to cause death. Therefore, charge under Section 304 part II of IPC is accordingly made out against the accused in present case. Hence, prosecution has prayed to pass appropriate order regarding Section 304 part II of I. P.C

05. The accused has filed his say below Exh. 44 and resisted the application. It is contended on behalf of the accused that the Ld. Court has framed charge under Section 279, 304-A, 337, 338 of IPC and 184, 134 (a)(b) and 185 of Motor Vehicle Act. According to charge frame, proceeding is going on. Accused has not committed offence under Section 304 (2) of IPC. Accused has never driven his vehicle in rash or negligence manner. Therefore, Section 304 (2) of IPC is not attracted. The contents in present application are false. Therefore, accused prayed to reject the application.

06. Perused application and say filed on it by accused. Heard both sides at sufficient length. The learned APP reiterated the contents of the application and further submitted that charge can be altered or modified at any stage and at any time before judgment is pronounced. Further, Ld. APP submitted that from the complaint, statement of witnesses, photographs, panchanama and documents along with charge-sheet on record, prima-facie shows that the accused has committed an offence punishable under section 304 Part II of Indian Penal Code. The Ld. APP in support of her contentions relied on

citation of Hon'ble Supreme Court in case of ***Alister Antony Parira Vs. State of Maharashtra***, in Criminal Appeals No. 1318-1320 of 2007. It was held in Para 40 that *Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amount to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. The cases which fall within last clause of Section 299, but not within clause 'fourthly' of Section 300 may cover the case of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 part II IPC.*

It is further observed in Para 41 that *A person responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amount to murder and punishable under Section 304 Part II of IPC.*

07. I have minutely gone through the case laws filed by Ld. APP. The facts of that case is squarely applicable to the case at hands. Hence, above case law is helpful for the prosecution.

When Section 304 Part II of the Indian Penal Code is attracted needs to be discussed.

Section 304 Part II of the Indian Penal Code (IPC) covers culpable homicide not amounting to murder, where death is caused with the knowledge that it is likely, but without the specific intention to

kill.

Section 304 Part II is attracted when, it is proved that even if the accused had no intention to cause such bodily injury as was likely to cause death but had the knowledge that the injury was like to cause death. When the accused gave one blow with appear of scissors on the chest of deceased, the intention to cause death can not be imputed to him, but it would be reasonable to infer that he has knowledge that any injury on the vital part of the body of the deceased would cause a death.

08. I carefully gone through the documents i.e. complaint, statement of witnesses, photographs, panchanama and documents along with charge-sheet, it appears that accused has driven his vehicle in rash or negligent manner, endangering human life of personal safety of others under the influence of liquor. It means, accused has done act with knowledge that it is likely to cause death, but without any intention to cause death, etc. Therefore, Section 304 part II of IPC is prima-facie attracted against the accused. Hence, charge framed against the accused needs to be altered and it is necessary to add Section 304 part II of IPC against the accused.

09. Further, it is to be understood that framing a charge doesn't mean holding the accused is guilty of such offence. However, if the accused is not charge for any specific offence and afterwards evidence of sufficient strength proving the guilt of the accused comes, then there would be technical complication. Definitely, the accused is getting every opportunity of defence by way of conducting cross examination of the prosecution witnesses and in such circumstances, charge appears to be convenient, if framed. Therefore, I am of the opinion that in the interest of justice, charge for the offence punishable under section 304

Part II of Indian Penal Code is required to be add against the accused.
Hence, I pass the following order -

ORDER

01. Application at Exh. 37 is hereby allowed.
02. In addition to charge for the offence punishable under section Section 279, 304-A 338, 337 of Indian Penal Code and 184, 134(a), (b)187 and 185 of Motor Vehicle Act, additional charge against the accused for the offence punishable under section 304 Part II of Indian Penal Code needs to be framed.
03. The offence punishable under section 304 Part II of Indian Penal Code is exclusively triable by Hon'ble Court of Sessions. Therefore, detail order of committal be passed on next date in the presence of accused.

Date :- 16.05.2026

Place :- Medha

(Dr. Vikram A. Avhad)
**Judicial Magistrate First Class,
Medha**