

SUPREME COURT OF INDIA

Girish Singh

Vs.

State of Uttaranchal

CrI.A.No.849 of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

09.05.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a learned Single Judge of the Uttaranchal High Court dismissing the appeal filed by the appellant who was convicted for offence punishable under Section 304 Part II of the *Indian Penal Code, 1860* (in short `IPC') and was sentenced to undergo imprisonment for five years and pay a fine of Rs.5, 000/- with default stipulation.
3. Background facts in a nutshell are as follows:

Sageer Ansari (hereinafter referred to as the `deceased') was a carpenter, who used to live in Hotel Hari Om in Uttarkashi. On 27.3.2005, he was coming from Hari Om Hotel towards Uttarkashi town. Accused/appellant Girish Singh was coming from opposite direction towards Sageer Ansari-deceased. When both of them reached near Tambakhani they had some altercations between them. Suddenly, accused-appellant Girish Singh pushed deceased Sageer Ansari from the road. Consequently, Sageer Ansari fell down from the hill and suffered injuries due to the fall from Uttarkashi - Tehri Road. The incident took place at 1.00 p.m. PW3 Israil Mian, brother of the deceased, and PW4 Mazhar Ansari, son of the deceased, who were following Sageer Ansari (deceased), witnessed the incident. The two rushed to the place of incident and took the injured to the hospital where he succumbed to the injuries suffered by him in the incident. PW3 Israil Mian, brother of the deceased, lodged first information report (Ext. A-3) with the police station. Investigation was undertaken and on completion of investigation charge sheet was filed. As accused abjured guilt, trial was held.”

4. Placing reliance on the evidence of two eye witnesses i.e. Israil Mian (PW3) and Mazhar Ansari (PW4) (brother and son of the deceased respectively), the Trial Court found the accused-appellant guilty and convicted him and imposed sentence as noted above.

5. In appeal before the High Court the stand of the accused was that this is not a case where Section 304 Part II IPC is applicable. On the other hand, this is a case where even if the prosecution version is accepted in toto, it would, at the most, be an offence punishable under Section 304A IPC. Another plea related to acceptance of the evidence of PWs 3 and 4 on the ground that they are related to the deceased. Both the pleas were rejected and appeal was dismissed. The stand taken before the High Court was reiterated by the learned counsel for the appellant.

6. In response, learned counsel for the respondent-State supported the judgments of the Trial Court as upheld by the High Court.

7. The plea relating to relative's evidence has no substance, when such evidence has credence it can be acted upon.

8. Coming to the plea of the applicability of Section 304-A, it is to be noted that the said provision relates to death caused by negligence. 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 relates to offences outside the range of Sections 299 and 300 IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304-A. It 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 or murder in Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A IPC has to make room for the graver and more serious charge of culpable homicide.

9. In order to be encompassed by the protection under Section 304-A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application.

10. When the background facts are considered in the light of the legal principles set out above, the inevitable conclusion is that stand of the appellant is clearly unsustainable.

11. The appeal is without merit, deserves dismissal, which we direct.