

Shyam Lal alias Guddu vs. State of H.P.

Cr. Appeal No. 11 of 2014

Reserved on

22.04.2026

05.06.2026 Present: M/s Rohit Sharma and Anuj Gupta, Advocates, for the appellant.

Mr Jitender Sharma, Additional Advocate General, for the respondent-State.

The appellant(accused) before the learned trial Court was charged with the commission of offences punishable under Section 304 of the Indian Penal Code (IPC), Section 187 of the Motor Vehicle Act (MV Act). He was convicted of the commission of offences punishable under Section 304 A of the IPC and Section 187 of the MV Act. Being aggrieved, he preferred an appeal before this Court.

2. When the matter was listed for hearing on 03.11.2025, the Court noticed that the charge sheet was filed for the commission of an offence punishable under Section 304 of the IPC. The charges were also framed for the commission of an offence punishable under Section 304 of the IPC, but the accused was convicted of the commission of an offence punishable under Section 304A of the IPC. The Court entertained a doubt that such a course could have been adopted. Hence, the matter was listed for consideration on this aspect.

3. I have heard M/s Rohit Sharma and Anuj Gupta, learned counsel for the appellant-accused and Mr

Jitender Sharma, learned Additional Advocate General for the respondent-State.

4. Mr Rohit Sharma, learned counsel for the appellant/accused, submitted that the ingredients of the commission of the offence punishable under Section 304 of IPC and 304A of IPC are distinct and require a different state of mind. Therefore, it is impermissible to convict a person of the commission of an offence punishable under Section 304 A of the IPC when he has been charged with the commission of an offence punishable under Section 304 of the IPC. He relied upon the judgments titled ***State of Karnataka and others vs. M/s Vedanta Ltd., AIR 2018 SC (Supp) 916; Shamnsaheb M. Multtani vs. State of Karnataka (2001) 2 SCC 577; and Manjula Sinha vs. State of UP and others (2007) 12 SCC 503*** in support of his submission.

5. Mr. Jitender Sharma, learned Additional Advocate General for the respondent-State submitted that the accused was not prejudiced by the omission to frame charges for the commission of an offence punishable under Section 304 A of IPC and it was permissible for the learned trial Court to convict the accused of the commission of an offence punishable under Section 304 A of the IPC even though the charges were framed for the commission of an offence punishable under Section 304 of IPC. He relied upon the judgment of the Hon'ble Supreme Court in ***Willie***

(William) Slaney vs. State of Madhya Pradesh, AIR 1956 SC 116, in support of his submission.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. Chhattisgarh High Court noticed the ingredients of the commission of offence punishable under Section 304 and 304A of the IPC in **Dwarika Prasad Dewangan v. State of Chhattisgarh, 2014 SCC OnLine Chh 191** and held that the ingredients of commission of an offence punishable under Section 304 and 304A are distinct from each other. Section 304 requires intent or knowledge, whereas Section 304 A requires rashness or negligence. It was observed:

16. It is well-settled law that 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. It is also well settled that 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 an act was likely to cause a person's death are ingredients of the offence of culpable homicide.

17. In a decision in **State of Gujarat v. Haidarali Kalubhai (1976) 1 SCC 889: (AIR 1976 SC 1012)**, the Supreme Court explained the relative scope of two sections, namely 304A and 304, Part-II IPC and concluded as under: —

10. Section 304-A, by its own definition, totally excludes the ingredients of Section 299 or Section 300,1. P.C. Doing an act with the intent to kill a person or knowledge that doing 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 in 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?

18. Thereafter, again in a decision in ***Balwant Singh v. State of Punjab 1994 Supp (2) SCC 67***, their Lordships of the Supreme Court have clearly held that Section 304A applies to the offence outside the range of Sections 299 and 300, IPC. The provision of Section 304A, IPC would apply to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death and clearly held as under: —

8. Then the question would be whether an offence under Section 304-A, IPC is made out? The provisions of this section apply to cases where there is no intention to cause death and no knowledge that the act done is, in all probabilities, will cause death. Therefore, this provision is directed at offences outside the range of Sections 299 and 300, IPC and obviously contemplates those cases in which neither intention nor knowledge enters. The words “not amounting to culpable homicide” in the section are very significant, and it must therefore be understood that intentionally or knowingly inflicted violence directly and willfully caused is excluded. The section applies only to such acts which are rash or negligent and are directly the cause of the death of another person. In other words, a rash act is primarily an overhasty act as opposed to a deliberate act, but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider to be sufficient, and this depends on the circumstances in each case.

19. Thereafter, again in a decision in ***Shankar Narayan Bhadolkar v. State of Maharashtra (2005) 9 SCC 71***, the Supreme Court defined the distinction between Sections 304A and 304, Part-II, IPC and held as under: —

18. Coming to the plea of the applicability of Section 304A, it is to be noted that the said

provision relates to death caused by negligence. Section 304 applies to cases where there is no intention to cause death and no knowledge that the act done is, in all probabilities, 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 the death of another person. Rashness and negligence are essential elements under Section 304A. 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 304A, IPC has to make room for the graver and more serious charge of culpable homicide.

20. Again, their Lordships of the Supreme Court in a decision in ***Naresh Giri v. State of M.P. (2008) 1 SCC 791: (AIR 2007 SC (Supp) 1190***), highlighted the relative scope of Sections 304 and 304-A, IPC by holding as under: —

7. Section 304-A, IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. The provision is directed at offences outside the range of Sections 299 and 300, IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of the death of another person. Negligence and rashness are essential elements under Section 304-A.

8. Section 304-A 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 under Section 300. If a person fully 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. 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 intent

or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby the death of any person is caused becomes punishable. Two elements, either of which or both of which may be proved to establish the guilt of an accused, are rashness/negligence; a person may cause death by a rash or negligent act, which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment, but of a deliberation in the mind, risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that, apart from any mens rea, there may be no motive or intention, still a person may venture or practice such rashness or negligence which may cause the death of another. The death so caused is not the determining factor.

8. Kerala High Court held in ***Benny v. State of Kerala, 1991 SCC OnLine Ker 325*** that Section 304 A of IPC is not a minor offence in relation to Section 304 of the IPC, and a person charged with the commission of an offence punishable under Section 304 of the IPC cannot be convicted of the commission of an offence punishable under Section 304 A of IPC. It was observed:

15. Further, in this case, a conviction under S. 304-A without a charge is also not possible. S. 221 of the Code of Criminal Procedure cannot be attracted because S. 304-A is not a minor offence constituting only some of the several particulars of the major offence punishable under the second part of S. 304. Both are independent and mutually exclusive offences. So also, this is not a case in which S. 221 of the Code could be attracted. There is no question of any doubt regarding the offence that the facts will constitute. In a charge for an offence under S. 302 or

304, it is not possible to enter a conviction for an offence under S. 304-A without a charge under that section. That is clear from the illustrations also. S. 221 is applicable only in cases where a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute...”

9. In **William Slaney** (supra), the Hon'ble Supreme Court held that the omission to frame charges is not fatal when the accused was not prejudiced by such omission. In the present case, there is no omission of the charges, but trying the accused for the commission of a specific offence and convicting him of the commission of another. Therefore, the cited judgment does not apply to the present case.

10. In **Kesav Mahindra** (supra), the question was regarding the alteration of the charges, which is permissible during the trial. However, in the present case, the trial has concluded, and there can be no question of alteration of charges at this stage. Therefore, this judgment will also not assist the State.

11. In **Shamnsaheb M. Multtani** (supra), the Court held that it is impermissible to convict a person of the commission of an offence punishable under Section 304B of the IPC when the charges have been framed for the commission of an offence punishable under Section 302 of the IPC. This judgment also shows that when the ingredients of two offences are not the same, one offence cannot be converted into another.

12. Therefore, it is held that it was impermissible for the learned Session Court to convict the accused of the commission of an offence punishable under Section 304A of the IPC when the accused was charged with the commission of an offence punishable under Section 304 of the IPC. List the matter for final hearing in due course.

(Rakesh Kainthla)
Judge

05th June, 2026

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